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**APPENDIX**

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**In the Supreme Court of the United States**

**October Term, 1978**

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**No. 78-752**

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**T. L. BAKER**

*v.*

**LINNIE CARL McCOLLAN**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE FIFTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED NOVEMBER 6, 1978  
CERTIORARI GRANTED JANUARY 15, 1979**

**INDEX**

	<u>Page</u>
Relevant Docket Entries .....	ii
Relevant Pleadings, Charge, Findings, or Opinion	
(a) First Amended Answer of Defendant T. L. Baker .....	1
(b) Plaintiff's Second Amended Complaint .....	6
(c) Defendant's Motion for Directed Verdict .....	11
(d) Judgment on Directed Verdict for Defendants .....	15
Opinion of the United States Court of Appeals for the Fifth Circuit .....	17
Portions of Transcript of Proceedings	
Excerpts from testimony of T. L. Baker .....	24
Excerpts from testimony of Gary Tate .....	87
Excerpts from testimony of Linnie Carl McCollan .....	93
Copies of Plaintiff's Exhibits Nos. 2, 3, 4, 7 and 9 .....	115

#### RELEVANT DOCKET ENTRIES

August 23, 1974—Filed COMPLAINT and issued SUMMONS (2)

September 17, 1974—Filed Defendant's (T. L. Baker) ORIGINAL ANSWER with Jury Demand

December 19, 1974—Filed FIRST AMENDED COMPLAINT adding Transamerica Insurance Co. as deft

January 13, 1975—Filed DEFENDANTS' (Transamerica Ins. Co's) ORIGINAL ANSWER with Jury Demand

May 7, 1975—Filed FIRST AMENDED ANSWER of Defendant, T. L. Baker

June 6, 1975—Filed SECOND AMENDED COMPLAINT

November 12, 1975—Filed Deft's (Baker) (second) MOTION for Directed Verdict (granted in open court) WMTJr

November 12, 1975—Filed DIRECTED VENDICT for defendants (Baker and Transamerica)

November 26, 1975—Filed JUDGMENT on directed verdict for defendants, T. L. Baker and Transamerica Ins. Co. . . . on pltf's motion, non-suit as to defts G. R. Tate and Frank Dyson and they are dismissed with prejudice and that said defts recover their costs . . . pltf take nothing as to defts Baker and Transamerica and that defts recover their costs WMTJr

December 5, 1975—Filed Pltf's NOTICE OF APPEAL from Judgment filed on 11-26-75. Copy of Notice & docket sheet mailed to Court of appeals. Atty notified other counsel.

In the

United States District Court  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CIVIL ACTION NO. CA3-74-823C

LINNIE CARL McCOLLAN,

*Plaintiff,*

v.

G. R. TATE, T. L. BAKER, JOHN DOE and  
TRANSAMERICA INSURANCE COMPANY,

*Defendants.*

FIRST AMENDED ANSWER OF DEFENDANT,  
T. L. BAKER

Now comes T. L. BAKER, one of the Defendants in the above styled and numbered cause, and in response to the First Amended Complaint of Plaintiff herein, answers and shows the Court the following:

1. Defendant admits that Plaintiff has asserted various Federal statutory and Constitutional bases for bringing this suit as alleged in Paragraph 1 of Plaintiff's First Amended Complaint but denies that Plaintiff has alleged facts giving this Court jurisdiction of this matter.
2. Defendant does not have information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiff's First Amended Complaint.
3. In response to paragraph 3 of Plaintiff's First Amended Complaint, Defendant Baker admits that he is a resident of Potter County, Texas, and that he is the duly elected Sheriff in and for such county. Defendant further admits that he is generally responsible for the

Potter County jail under Article 5116, V.A.T.S., but denies that he is responsible for all actions of his deputies as alleged. Defendant is without information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 3.

4. Defendant admits that Plaintiff was brought to the Potter County jail by deputies of the Potter County Sheriff's office on or about December 30, 1972 but denies that he remained there until January 3, 1973 but would show the Court that he was released on January 2, 1973. Defendant further denies that said Plaintiff was arrested and incarcerated without probable cause and without authority of a warrant. Defendant admits that Plaintiff was released when it was determined that his identity had been confused with that of his brother, one Leonard C. McCollan. Defendant is without information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of Plaintiff's First Amended Complaint with respect to allegations concerning his arrest and confinement by the City of Dallas. All other allegations of Paragraph 4 are denied.

5. Defendant Baker denies that Plaintiff was damaged as alleged in Paragraph 5 of Plaintiff's First Amended Complaint as a result of any actions by Defendant Baker or for which he might be responsible and further denies that Plaintiff suffered any damages as alleged in such paragraph.

6. Defendant denies that Plaintiff is entitled to recover any damages from Transamerica Insurance Company as a result of any actions of this Defendant as alleged in paragraph 6.

7. Defendant denies that there was any gross negligence or reckless disregard for the rights of Plaintiff giving rise to exemplary damages as alleged in paragraph 7 of Plaintiff's First Amended Complaint and would show the Court that this Defendant at all times acted with due regard for said Plaintiff's rights.

#### **FIRST DEFENSE**

The Complaint fails to state a claim against this Defendant upon which relief can be granted.

#### **SECOND DEFENSE**

The Complaint does not allege facts sufficient to show that it is one arising under the Constitution or laws of the United States.

#### **THIRD DEFENSE**

The Complaint fails to invoke the jurisdiction of this Court.

#### **FOURTH DEFENSE**

Defendant Baker acted in good faith in all actions taken by him and in carrying out his duties of Sheriff with respect to Plaintiff and in so doing is not liable to said Plaintiff as alleged in Plaintiff's Complaint.

#### **FIFTH DEFENSE**

Defendant Baker and all persons acting for or under him acted in good faith in arresting and confining Plaintiff and taking any action alleged by Plaintiff to have violated his rights.

#### **SIXTH DEFENSE**

Defendant Baker is not responsible under the doctrine of "respondeat superior" for the actions of his deputies and is not liable for any conduct of his deputies as alleged by Plaintiff herein.

#### **SEVENTH DEFENSE**

Defendant Baker and all persons acting for or under him had probable cause for arresting and confining Plaintiff.

#### **EIGHTH DEFENSE**

Plaintiff was, at all times, afforded due process of law under the Constitution and Statutes of the United States in his arrest and confinement and any actions or failures to act by Defendant Baker or persons acting for or under him were not such actions as will breach any right or rights afforded Plaintiff under the Fourteenth Amendment to the United States Constitution or Title 42 U. S. C. 1983.

#### **NINTH DEFENSE**

Plaintiff participated in creating the circumstance leading to his arrest by allowing his brother to obtain a duplicated driver's license with information thereon describing Plaintiff and Plaintiff should therefore not be allowed to recover where he created or helped to create the situation leading to his arrest and confinement.

#### **TENTH DEFENSE**

Plaintiff knew or should have known that his brother was using Plaintiff's name and identifying himself as Plaintiff and should have taken action to inform authorities of the confusion of identities. Plaintiff's failure to take such action contributed to the situation leading to his arrest and confinement and should bar Plaintiff from recovery for damages to which his own failures contributed.

#### **ELEVENTH DEFENSE**

Defendant Baker was acting at all times in the arrest and confinement of Plaintiff pursuant to a validly issued warrant for the arrest of a person named and identified as Plaintiff and immediately released said Plaintiff upon learning that he was not the person for whom the warrant was intended.

WHEREFOR, Defendant, T. L. BAKER, prays that Plaintiff take nothing by his suit and that Plaintiff's suit be in all things dismissed and that the Defendant recover from Plaintiff his costs in this behalf expended.

Respectfully submitted,

KERRY KNORPP, COUNTY ATTORNEY  
SAMUEL C. KISER, ASSISTANT  
COUNTY ATTORNEY,  
303 Courthouse  
Amarillo, Texas 79101

A. W. SORELLE III  
UNDERWOOD, WILSON, SUTTON,  
BERRY, STEIN AND JOHNSON  
P. O. Box 9158  
Amarillo, Texas 79105

ATTORNEY FOR T. L. BAKER  
ONE OF DEFENDANTS

By

-----  
One of Counsel

**(CERTIFICATE OF SERVICE OMITTED)**

In the  
**United States District Court**  
**FOR THE NORTHERN DISTRICT OF TEXAS**  
**DALLAS DIVISION**

**CIVIL ACTION NO. 3-74-823-C**

LINNIE CARL McCOLLAN,  
*Plaintiff,*  
*v.*  
 G. R. TATE, T. L. BAKER, FRANK DYSON and  
 TRANSAMERICA INSURANCE COMPANY,  
*Defendants.*

**SECOND AMENDED COMPLAINT**

NOW COMES LINNIE CARL McCOLLAN, hereinafter sometimes referred to as plaintiff and for cause of action would show as follows:

1. This action is brought pursuant to the Fourteenth Amendment to the United States Constitution and Title 28 U.S.C. 1343(3) (4) and Title 42 U.S.C. 1983, 1988.
2. The plaintiff is at all relevant times herein a resident of Dallas County, Texas.

3. Defendant, G. R. Tate, is a resident of Dallas County, Texas, and is a police officer for the City of Dallas, holding Badge #2835. Defendant, T. L. Baker, is a resident of Potter County, Texas and is the duly elected and qualified sheriff in and for such county. Article 5116, V.A.T.S., places the responsibility for the county jail directly upon the sheriff and defendant herein, T. L. Baker, and responsibility cannot be delegated to others. Texas law also makes defendant Baker responsible for the actions of his deputies. Defendant, Frank Dyson, is a resident of Dallas County, Texas, and is at all relevant times herein the Chief of Police for the City of Dallas, Texas; and the City of Dallas Ordinances and the City of Dallas Charter make him the keeper of the jail operated by the City of Dallas Police Department. Defendant, Transamerica Insurance Company, is a corporation organized and existing under and by virtue of the laws of the State of California and maintains its principal place of business in Los Angeles, California, and is duly authorized to do business in the State of Texas and is subject to process. It maintains an office in Dallas, Dallas County, Texas, and its registered agent for service is J. D. Foster. Process may be served upon Mr. Foster at 4230 LBJ Freeway, Dallas, Texas.

At all times material hereto defendants Tate, Baker and Dyson were acting under color of their official capacity and their acts were performed under color of the statutes of the State of Texas and/or the ordinances of the City of Dallas, and defendant, Transamerica Insurance Company, was at all times material hereto the surety for defendant, Baker.

4. On December 26, 1972, while your plaintiff was driving a car for his employer, Mail Messenger Service, he was stopped and accused by defendant City of Dallas Police Officer, G. R. Tate, of running a red traffic light at the intersection of Second and Scyene in the City of Dallas, Texas. Defendant Tate then issued your plaintiff

a traffic citation to appear on January 17, 1973, in Dallas Corporation Court No. 4 at 8:00 A.M. After plaintiff signed the traffic citation and promised to appear in court as directed, defendant Tate placed handcuffs on your plaintiff and put him in his police vehicle and transported plaintiff to a jail under the supervision of defendant, Frank Dyson. Your plaintiff was incarcerated without probable cause and without the authority of a warrant authorizing the arrest of your plaintiff. *On December 30, 1972, your plaintiff was taken in handcuffs and in chains by deputies of defendant, T. L. Baker, to the Potter County Jail.* Your plaintiff was then incarcerated in the Potter County Jail and remained there until January 3, 1973, when he was released and told that he was mistakenly arrested and incarcerated because a person lawfully charged with the sale of narcotics had given your plaintiff's name as his own. Throughout the entire illegal incarceration and illegal arrest and imprisonment of your plaintiff he was never

- (1) brought before a judge or magistrate and/or
- (2) advised of his right to counsel and/or
- (3) permitted to telephone his wife or family and/or
- (4) telephone or consult with a lawyer.

Each of the defendants separately and in concert acted outside the scope of his jurisdiction and without authorization of law acted wilfully, knowingly and negligently to deprive the plaintiff of his right to:

- (1) Freedom from illegal seizure of his person;
- (2) Freedom from unlawful arrest and imprisonment;
- (3) Freedom from illegal detention and imprisonment;
- (4) Freedom from physical intimidation.

Several times during the illegal arrest and imprisonment of your plaintiff by the defendants herein he insisted that there was some mistake and that he had done nothing which would authorize his imprisonment. All of these protests were ignored. At no time during his imprisonment, with the exception of the last hours of his imprisonment was any attempt made to match your plaintiff's physical description, finger prints or photograph with the actual perpetrator of the crime for which your plaintiff was falsely and illegally arrested and imprisoned.

5. As a direct and proximate cause of the aforesaid acts of each of the defendants herein your plaintiff suffered bodily pain and injury and mental anguish from being imprisoned in small, crowded, dirty, vermin infested jail cells and your plaintiff and his family was deprived of his income and support and the plaintiff was denied the right to comfort and aid his wife and child due to his incarceration. All of these damages amount to a sum not less than \$50,000.00.

6. Your plaintiff is entitled to recover damages from defendant, Transamerica Insurance Company, due to the fact that it is the surety of defendant Baker and Texas law provides that the surety of a sheriff is responsible in damages jointly and severally with the sheriff.

7. Due to the gross negligence and reckless disregard of the defendants herein in not immediately ascertaining that they had falsely and illegally imprisoned your plaintiff, he becomes entitled to exemplary damages in a sum of \$50,000.00.

WHEREFORE, plaintiff demands judgment against the defendants, each of them, jointly and severally, in the amount of \$50,000.00, and he further demands punitive damages against defendants, and each of them, jointly and severally,

in the amount of \$50,000.00, plus the costs of this action; and he further demands such other relief as to this Court seems just, proper and equitable.

Respectfully submitted,

Douglas R. Larson  
800 Main Street  
Dallas, Texas 75202  
(214) 741-2958

Attorney for Plaintiff

**CERTIFICATE OF SERVICE OMITTED**

**In the**  
**United States District Court**  
**FOR THE NORTHERN DISTRICT OF TEXAS**  
**DALLAS DIVISION**

**CIVIL ACTION NO. 3-74-823-C**

**LINNIE CARL MCCOLLAN,**  
*Plaintiff,*  
*vs.*

**G. R. TATE, T. L. BAKER, FRANK DYSON and**  
**TRANSAMERICA INSURANCE COMPANY,**  
*Defendants.*

**MOTION FOR DIRECTED VERDICT**

COMES Now Defendant, T. L. Baker, and after Plaintiff and Defendant rested and moves the Court to grant a directed verdict in favor of said Defendant, dismissing Plaintiff's cause herein and for grounds would show the following:

**I.**

Plaintiff has failed to plead a cause of action against Defendant, T. L. Baker, there being no allegations of any personal acts of said Defendant nor any facts causing him to be liable for the acts of others.

**II.**

The evidence presented by Plaintiff raises no fact issues which, if found favorable to Plaintiff, would support a verdict against Defendant, T. L. Baker.

**III.**

Plaintiff failed to produce any evidence tending to show that he was denied any rights cognizable under 42 U.S.C. § 1983, there being no evidence that anyone knowingly deprived him of any right without due process of law.

**IV.**

Defendant, T. L. Baker, is not liable, as a matter of law, for arrest and confinement pursuant to a warrant for arrest which is valid on its face.

**V.**

Plaintiff failed to show that Defendant Baker acted in any manner other than in the good faith belief that he was executing a valid warrant for arrest issued pursuant to proper authority.

**VI.**

There is no deprivation of a right giving rise to an action under 41 U.S.C. § 1983, as a matter of law, by failing to take Plaintiff before a magistrate or failing to warn Plaintiff of his rights as alleged by Plaintiff.

**VII.**

The evidence with respect to Defendant Baker shows only that he acted to secure Plaintiff his freedom and raises no

issue concerning any action by Defendant Baker to improperly deprive Plaintiff of his freedom.

**VIII.**

Defendant Baker is not responsible, as a matter of law, for the acts of his subordinates under the doctrine of "respondeat superior" and Plaintiff has failed to produce any evidence to indicate that Defendant authorized, participated, or in any way ratified any acts of his subordinates which violated any rights of Plaintiff.

**IX.**

Plaintiff has failed to show any physical intimidation as a violation of the Civil Rights Act alleged by Plaintiff in his complaint.

**X.**

Plaintiff has failed to show that he was refused permission to telephone or consult with his wife, family, or an attorney and such failures, if shown, could not be attributed to Defendant Baker.

**XI.**

An arrest and confinement pursuant to a warrant for arrest valid on its face does not create any cause of action under 42 U.S.C. § 1983.

**XII.**

Plaintiff failed to produce any evidence that Defendant Baker had any knowledge that the warrant for arrest pursuant to which Plaintiff was arrested, had been issued for the wrong person.

WHEREFORE, Defendant Baker moves the Court to grant a directed verdict for each and all of the foregoing reasons.

Respectfully submitted,

KERRY KNORPP and SAMUEL C.  
KISER

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Attorneys for Defendant,  
T. L. BAKER

One of Counsel

In the  
United States District Court  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

CIVIL ACTION NO. CA3-74-833C

LINNIE CARL McCOLLAN,

*Plaintiff,*

v.

G. R. TATE, T. L. BAKER, FRANK DYSON and  
TRANSAMERICA INSURANCE COMPANY,

*Defendants.*

**JUDGMENT**

This cause came for trial before the Court and a jury on the 10th day of November, 1975, and prior to receiving any evidence, Plaintiff moved to take a non-suit against Defendants, G. R. Tate and Frank Dyson, and to accept dismissal of this cause as to those Defendants with prejudice, therefore, it is hereby .

ORDERED, ADJUDGED and DECREED that Defendants, G. R. Tate and Frank Dyson are dismissed with prejudice and that said Defendants have and recover their cost of action from Plaintiff and have execution therefor; and

The issues having been duly tried as to remaining Defendants, T. L. Baker and Transamerica Insurance Company, and on the 12th day of November, 1975, after the close of evidence by both parties, the Court directed the jury on motion of Defendant, T. L. Baker, to render a verdict for Defendants, T. L. Baker and Transamerica Insurance Company, that Plaintiff take nothing by his action against said Defendants, and such verdict having been rendered by the jury, it is hereby,

**ORDERED, ADJUDGED and DECREED** that Plaintiff take nothing by its action against Defendants, T. L. Baker and Transamerica Insurance Company, and that said Defendants have and recover their costs of action, and that Defendants have execution therefor.

DATED November 26, 1975.

W. M. Taylor, Jr.,  
United States District Judge

**LINNIE CARL MCCOLLAN,**  
*Plaintiff-Appellant,*  
*v.*  
**G. R. TATE ET AL.,**  
*Defendants,*  
**T. L. BAKER AND TRANSAMERICA**  
**INSURANCE COMPANY,**  
*Defendants-Appellees.*  
**No. 76-1268.**  
**United States Court of Appeals,**  
**Fifth Circuit.**  
**June 19, 1978.**

Appeal from the United States District Court for the Northern District of Texas.

Before WISDOM and GEE, Circuit Judges, and VAN PELT,\* District Judge.

GEE, Circuit Judge:

Plaintiff's name is Linnie McCollan. His brother, whose real name is Leonard McCollan, somehow procured a duplicate of plaintiff's driver's license, identical to plaintiff's except that Leonard's picture graced it instead of Linnie's. Leonard was arrested on a narcotics charge and since he was carrying the doctored driver's license, he was booked under the name of Linnie C. McCollan.

Leonard was released on bond. His bondsman received an order allowing him to surrender his principal and a warrant issued for the arrest of Leonard. Since Leonard had been using his brother's name, the warrant was in the name of Linnie C. McCollan. Linnie (the real Linnie) was arrested on the warrant in Dallas County on December 26, 1972.

\* Senior District Judge of the District of Nebraska, sitting by designation.

He was kept in a Dallas jail until December 30, when deputies from Potter County, where the warrant had issued, took custody of him. He was kept in the Potter County Jail until January 2, 1973, when the error was noticed and he was released.

Linnie subsequently brought this action in federal court claiming violation of his rights under the Fourteenth Amendment and section 1983. The trial judge directed a verdict for Potter County Sheriff T. L. Baker and his surety, defendant Transamerica Insurance Company. Plaintiff's claims against all other defendants were dismissed with prejudice. Only the directed verdict as to Baker and Transamerica is before this court on appeal. Having originally postponed decision in this case pending the Supreme Court's disposition of *Procurier v. Navarette*, — U.S. —, 98 S.Ct. 885, 55 L. Ed. 2d 24 (1978),<sup>1</sup> we now hold that plaintiff's case should have been presented to the jury and, accordingly, we reverse and remand for a new trial.

The facts as developed at trial are largely undisputed, and to the extent there is conflict we must view the evidence in the light most favorable to the nonmoving party, in this case the plaintiff. See *Boeing Co. v. Shipman*, 411 F. 2d 365 (5th Cir. 1969) (en banc). If the evidence, when viewed in this light, is so one-sided that reasonable minds could not reach a contrary verdict, the district court's directing the verdict in favor of the defendant was proper. *Ibid.* If reasonable minds could reach contrary conclusions, the issue should have gone to the jury.

<sup>1</sup> *Procurier*, which had been argued but not decided at the time of oral argument in this case, presented, *inter alia*, the issue of whether simple negligence on the part of a state official could give rise to § 1983 liability. See *Procurier v. Navarette*, — U.S. —, 98 S. Ct. 855, 862-63, 55 L. Ed. 2d 24 (Burger, C. J., dissenting). However, the Supreme Court disposed of the case on other grounds.

When the Dallas police notified the Potter County Sheriff's Department that they had arrested "Linnie C. McCollan," the identification of plaintiff as the man wanted under the warrant was verified by his birthdate as shown on his license. Unfortunately, the written information on both Linnie C. McCollan's and Leonard (alias Linnie C.) McCollan's driver's licenses was identical. So this verification failed to reveal the error. The Potter County Sheriff's Department did not send the mugshots and fingerprints of Leonard McCollan which it had in its files. Nor did the sheriff's deputies who drove to Dallas to pick up the plaintiff take this identifying material with them. When the deputies brought plaintiff to the Potter County Jail on December 30, no one was on duty in the Identification Department, and no one compared plaintiff with the photographs and fingerprints on file. Had the photographs and fingerprints been sent or carried to Dallas or had the identifying information in the file at the sheriff's office been checked, the mistake would have been evident. Although plaintiff is Leonard's brother, he does not resemble Leonard in appearance.

The leading case in the Fifth Circuit on a sheriff's liability for false imprisonment under section 1983 is *Bryan v. Jones*, 530 F. 2d 1210 (5th Cir.) (en banc), *cert. denied*, 429 U.S. 865, 97 S. Ct. 174, 50 L. Ed. 2d 145 (1976). The court, sitting en banc, held that a sheriff has the kind of qualified immunity which the Supreme Court has recognized in certain other public officials. See *Wood v. Strickland*, 420 U.S. 308, 95 S. Ct. 992, 43 L. Ed. 2d 214 (1975); *Scheuer v. Rhodes*, 416 U.S. 232, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974); *Pierson v. Ray*, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967). Under *Bryan* a sheriff is not liable under section 1983 if he acted in good faith and he acted reasonably. 530 F. 2d at 1215.

*Bryan* made clear that in a section 1983 false imprisonment action the reasonable good faith of the sheriff comes into play only as a defense. To make out a *prima facie* case, a plaintiff need show only: (1) intent to confine; (2) acts resulting in confinement; and (3) consciousness of the victim of confinement or resulting harm. 530 F. 2d at 1213, *citing* Restatement (2d) Torts § 35 (1965). There can be no doubt that the sheriff's deputies intended to confine and did confine the plaintiff. Similarly, there can be no doubt that plaintiff was aware of the fact that he was being held in jail. Since the deputies' actions were authorized by Sheriff Baker and the same actions were in keeping with the policies of the Potter County Sheriff's Department at that time, plaintiff established his *prima facie* case against Sheriff Baker. *See Jennings v. Patterson*, 460 F. 2d 1021 (5th Cir. 1972). *Cf. Rizzo v. Goode*, 423 U.S. 362, 96 S. Ct. 598, 46 L. Ed. 2d 561 (1976) (supervisory officials not subject to injunction under section 1983 where no showing that they authorized or approved lower officials' misconduct). Assuming *arguendo* that the actions and intent of the deputies are not properly attributable to the sheriff,<sup>2</sup> on the facts of this

<sup>2</sup> Prior § 1983/false imprisonment cases have not dealt squarely with the problem of whether a sheriff must have personal knowledge that a person is being held in his jail in order for him to be liable under § 1983. *See Bryan v. Jones*, *supra*; *Whirl v. Kern*, 407 F. 2d 781 (5th Cir.) cert. denied; 396 U.S. 901, 90 S. Ct. 210, 24 L. Ed. 2d 177 (1969). In *Whirl* the court discussed the absence of personal knowledge only with respect to the state-law false imprisonment issue, over which the court had pendent jurisdiction 407 F. 2d at 795. With respect to the federal false imprisonment claim under § 1983, *Whirl* held that a sheriff need not know that a prisoner's detention is *unlawful*. But the opinion says nothing about a sheriff's knowledge that the prisoner is being detained and § 1983 liability. *Bryan* answered the qualified immunity question but said nothing about the application of respondeat superior notions to plaintiff's *prima facie* case. *See also Lewis v. Hyland*, — U.S. —, 98 S. Ct. 419, 54 L. Ed. 2d 291 (1977) (Marshall, J., dissenting from denial of certiorari); *Developments*, 90 Harv. L. Rev. 1133, 1206-09 (1977).

case plaintiff was entitled to go to the jury on the basis of Sheriff Baker's own action or inaction. To incur liability under section 1983 a state official need not directly subject a person to a deprivation of his constitutional rights. The language of the statute<sup>3</sup> and the holdings of this court make clear that he can be held liable if he causes the plaintiff to be subjected to a deprivation of his constitutional rights. *See Sims v. Adams*, 537 F. 2d 829 (5th Cir. 1976). Sheriff Baker's failure to require his deputies to transmit the identifying material described above "caused" plaintiff's continued detention. Plaintiff has made out a *prima facie* case under *Bryan*, and Sheriff Baker can escape liability only if he acted in reasonable good faith. As the court said in *Bryan*, "[i]f [the sheriff] negligently establishes a . . . system in which errors of this kind are likely, he will be held liable." 530 F. 2d at 1215.

The only real question in this case is whether the sheriff's failure to introduce a policy of sending photographs and fingerprints or his failure to have someone on duty to check plaintiff's identity upon his arrival or during his stay at Potter County Jail was unreasonable.<sup>4</sup> Since plaintiff in no way challenges the subjective good faith of the sheriff, his qualified immunity hangs on the reasonableness of his action

<sup>3</sup> Section 1983 reads:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

(Emphasis added).

<sup>4</sup> Since the sheriff did not take office until after the warrant had issued in the name of "Linnie C. McCollan," he cannot be held responsible for any conduct by the sheriff's department prior to that time.

or inaction. The sheriff himself testified that it was a standard practice in most sheriff's departments the size of his to send such identifying material. Certainly the jury could have found that he behaved unreasonably in failing to institute a similar policy. Alternatively, the jury might have concluded that comparing the date of birth, as listed in the sheriff's files, with the date of birth on plaintiff's driver's license when he was arrested in Dallas was sufficient safeguard against arresting and detaining the wrong person and that it was reasonable for the sheriff not to require his deputies to take the additional precaution of sending the photographs and fingerprints.

Defendant contends that the existence of the warrant for the arrest of a person named Linnie C. McCollan created a duty in him to arrest and detain the plaintiff. He relies on *Perry v. Jones*, 506 F. 2d 778 (5th Cir. 1975), for the proposition that since plaintiff was arrested and detained on a warrant fair on its face, he has committed no wrong cognizable under section 1983.

Defendant misperceives his duties. His argument would find a duty in a police officer or sheriff to arrest any person who bears the name in which a warrant was issued. A warrant for John Smith would put a policeman under a duty to arrest the first John Smith, or perhaps all John Smiths, he encountered. Such cannot be the law.

We are not saying that a sheriff is under a duty to make an independent investigation as to the guilt or innocence of a person wanted under a warrant. If a warrant was issued for the arrest of an individual and the individual *actually* wanted under that warrant is arrested, the arresting officer has fulfilled his duty, and he will not be liable for false arrest or false imprisonment merely because the person

arrested is later found to be innocent of the charges against him. *Perry v. Jones, supra*. We are saying that the sheriff or arresting officer has a duty to exercise due diligence in making sure that the person arrested and detained is actually the person sought under the warrant and not merely someone of the same or a similar name. See Restatement (2d) Torts § 125, comment (d) 1965.

REVERSED AND REMANDED.

## DIRECT EXAMINATION

[31] BY MR. LARSON:

"Q Would you tell the jury your name, please?

"A T. L. Baker.

"Q And how are you employed at the present time?

"A Sheriff of Potter County.

"Q And how long have you been the Sheriff of Potter County?

"A Since November 20, 1972.

"Q Now, during the proceedings in this lawsuit I have asked you to seek out your — search out your records and determine whether or not you had any papers regarding the arrest of a man named Leonard McCollan, is that right?

"A That's right.

"Q All right. Now, before we go into that, though, let's talk about what you do when you arrest somebody and take them up to your jail. Suppose I were arrested in Potter County for some charge and I was taken to your jail. What would you do with me first?

"A From the time I arrested you?

"Q That's right.

"A Upon the arrest you would be taken to the courthouse before the magistrate there at the courthouse and then up to the jail at that time.

"Q All right. Well, now. When you got me up to the [32] jail you would take my picture, wouldn't you?

"A It depends on whether you were going to be released immediately or whether you were going to be there a while

whether your picture would be taken, but before your release it would be.

"Q All right. Well, at some time before I was let go you would take my picture, wouldn't you?

"A Yes.

"Q Then you would also take my fingerprints, wouldn't you?

"A Yes.

"Q Now, you take two sets of fingerprints, isn't that right, or do you take three sets?

"A Three sets.

"Q All right. And you keep one in your office; right?

"A Right.

"Q And you send one to the FBI?

"A Right.

"Q And you sent one to the Department of Public Safety; is that right?

"A That's right.

"Q All right. For the benefit of the jury, the Department of Public Safety is in essence the Texas Highway Patrol and the Texas Rangers?

"A Yes.

[33] "Q And they keep records down in Austin as to all the arrests in the State of Texas, is that right?

"A And the FBI is the Federal Bureau of Investigation and they have offices not only in Washington, D. C., but in all major cities and they keep records — that's right.

"Q On people that have been arrested? Is that right?

"A Yes, sir.

THE COURT: Wait a minute. Will you speak out a little louder, I don't know that the jury can hear you.

THE WITNESS: Okay.

"Q (By Mr. Larson) Now, there's one other place where you send information, isn't that true?

"A The fingerprint cards, no, that's the only place we sent them.

"Q Isn't there a computer center called the National Crime Information Center?

"A This is put on your teletype if it is an outstanding warrant only. The information is only put in there where there's an outstanding warrant.

"Q Okay. If there wasn't any outstanding warrant on me?

"A There wouldn't be any information then to send.

"Q But when you put me in your jail you would check to see if there were any outstanding warrants on me anywhere [34] else, isn't that right?

"A Right.

"Q Now from the records in your department did anyone take the pictures of the person we now know is Leonard McCollan?

"A Yes.

"Q Do you know when?

"A October, '72, I believe.

"Q Do we know the exact date?

"A No, sir.

"Q Well, we have a warrant?

"A Not off hand.

"Q We have a warrant, don't we?

"A Yes, sir.

"Q Would you go through these papers and find it for me, the original warrant for Leonard — or Linnie McCollan is what it says on the warrant, but it was actually Leonard McCollan?

"A I don't believe I have it.

"Q See if you have it in this stuff here (indicating).

"A Okay. The original was on the 5th of October, '72.

"Q All right. May we see that?

"A Yes.

MR. LARSON: I would like to have this marked [35] as Plaintiff's One.

(Plaintiff's Exhibit Number One was marked for identification by the Court Reporter.)

"Q (By Mr. Larson) Now, for the record, this is what has been marked as Plaintiff's Exhibit One, and that's the original arrest warrant for a man known as Linnie Carl McCollan, who we now know as Leonard McCollan, is that right?

"A Yes.

MR. LARSON: Offer Plaintiff's Exhibit One.

MR. KNORPP: Your Honor, we have no objections, with this clarification, and that would be that counsel's question

to Mr. Baker was the first arrest of Leonard McCollan and the Sheriff made a response to that and the warrant concerns Linnie McCollan and —

THE COURT: Well, it will speak for itself won't it?

MR. KNORPP: Yes, Your Honor, but the Sheriff will have a date as being the original arrest of Leonard McCollan.

THE COURT: Well, what I understand is being asked — now, is this the warrant you're asking for?

MR. LARSON: Your Honor, I was afraid this was going to happen. They're going to try to confuse everybody with all the records and what not. What I asked from him and what I wanted to know was is this [36] the first warrant that was issued out of Potter County for the arrest of the man known as Linnie Carl McCollan but we now know his true name is Leonard McCollan, and he said "yes".

THE COURT: What is that, Plaintiff's Exhibit One?

MR. LARSON: Yes sir.

THE COURT: And it's for whom?

MR. LARSON: It says: "You are commanded to take the body of Linnie Carl McCollan."

THE COURT: All right, is that the first one, Sheriff?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. LARSON: Thank you.

"Q (By Mr. Larson) Now, the man that is identified in that warrant was placed in your jail about October the fifth, is that right, of 1972?

"A Tenth of October.

"Q Well, do you need to see the warrant?

"A Yeah. Sixth.

"Q On the sixth of October?

THE COURT: Sheriff, you're going to have to speak up. I don't think the jury can hear you. Don't have a private conversation with him, everybody in the courtroom has got to hear you.

[37] THE WITNESS: Yes, sir.

"Q (By Mr. Larson) So Linnie Carl McCollan or the man that was identified as Linnie Carl McCollan was arrested on the sixth of October, 1972; is that right?

"A That's right.

"Q Now, according to your procedures in your jail, you took this man's picture and his fingerprints at one time or another, didn't you?

"A Linnie Car McCollan that was arrested?

"Q Yes.

"A Yes.

"Q And do you have those pictures there with you?

"A Yes.

MR. LARSON: Would you mark these as Plaintiff's Two and Three?

(Plaintiff's Exhibits Two and Three were marked for identification by the Court Reporter.)

"Q (By Mr. Larson) All right, for the record, these are the photographs, Plaintiff's Exhibits Two and Three, that

were taken of the man identified as Linnie Carl McCollan on or about October 6, 1972, is that right?

"A Okay. This one (indicating) was taken the ninth and the eleventh of '72.

"Q All right.

"A And this one (indicating) came out of the police [36] department on November — this is a police department photo that was taken at that time, on October 6th.

"Q All right. But this is the man that was placed in the Potter County jail? Is that right?

"A Yes, sir.

"Q In October, 1972?

"A Yes, sir.

MR. LARSON: Offer Plaintiff's Exhibits Two and Three.

THE COURT: They're admitted.

"Q (By Mr. Larson) Now, this man that was placed in jail — in the Potter County jail in October, 1972, whose pictures we have just shown the jury and have been admitted in evidence, you took his fingerprints, too, didn't you?

"A Okay. The one where he was placed in jail by the City, his fingerprints would have been taken at the City, but they would not have been taken in our department at that time, it's just a transfer.

"Q He was transferred from the City?

"A From the City over to the County.

"Q Well, now did you take his fingerprints?

"A No.

"Q Nobody in your office took his fingerprints?

"A No, sir.

"Q But you had copies of them?

[39] "A Yes, sir.

"Q Do you have them with you?

"A Let me see.

No, sir, I don't have them here.

MR. LARSON: Counsel, you had them at the time of the deposition. Could you tell me where they might be?

MR. SoRELLE: Those were the copies we tendered. They came off the microfilm and we may have — if you will get the exhibits off the deposition I can show you which ones.

MR. LARSON: They didn't put my exhibits on the deposition.

MR. SoRELLE: Mine weren't either.

MR. LARSON: Well, now, Counsel, you promised me that you would have all this stuff.

THE COURT: Let's not have a private discussion. What's your question?

MR. SoRELLE: Your Honor, I think Mr. Larson and I have an agreement on what we were going to do but in fact the items that we furnished at the time of deposition are attached to the original deposition as filed here.

THE COURT: What do you want now?

MR. LARSON: The fingerprint card that they had [40] on this man known as Linnie McCollan which they had in their possession in October, 1972.

THE COURT: The Sheriff doesn't have them there in that file?

MR. LARSON: No, sir.

THE WITNESS: No, sir.

THE COURT: What about these? (Indicating.)

MR. KNOPP: Your Honor, we did not have possession, either at the time of the deposition or now, other than on microfilm, and that's what we have in the deposition here that you have handed Counsel.

"Q (By Mr. Larson) Now, is that the fingerprints you had access to?

"A Yes, sir.

MR. LARSON: Let's have those marked, if you would.

(Plaintiff's Exhibit Number Four was marked for identification by the Court Reporter.)

MR. LARSON: Offer Plaintiff's Four.

MR. KNORPP: No objection.

THE COURT: They're admitted.

"Q (By Mr. Larson) Now, referring to Plaintiff's Exhibit Four, isn't there a method by which a person's fingerprints are classified?

"A Yes, sir.

"Q And would you explain how? I don't want you to [41] explain how it's done but explain generally what happens when you classify someone's fingerprints.

"A Well, the I. D. technician or someone who is skilled in classifying them will classify the prints to points of identification on each print.

"Q All right. And he will assign some number code to them, isn't that right?

"A Yes, sir. It depends on which system he uses, the Henry System or several other systems that they have.

"Q All right. Then after they're classified, then they're sent down to the Department of Public Safety, isn't that right?

"A No, sir. We don't classify any prints that we send to the Department of Public Safety.

"Q The Department of Public Safety then classifies them?

"A Yes, sir.

"Q Then after you classify your prints for the public—after the prints are sent to the Department of Public Safety, then you can request what is known in the trade as a "rap sheet", isn't that right?

"A Yes, sir.

"Q And tell the jury what a rap sheet is.

"A A rap sheet is the criminal history sheet of the man who fits that fingerprint classification: name and date [42] of birth.

"Q So the Department of Public Safety classifies people by their fingerprints and doesn't necessarily rely on their names; isn't that true?

"A That's right. True.

"Q So we might know then that the man who was arrested in October, his fingerprints were sent to the Department of Public Safety in Austin some time about that date; is that true?

"A Yes, sir. After his arrest at the City when they would have sent them then.

"Q So then someone would have got what's called a rap sheet back from the Department of Public Safety, isn't that right?

"A Yes, sir. The agency which submits them automatically gets a set of fingerprints back.

"Q How long does that take?

"A It depends on the work load of the DPS. It's hard to judge.

"Q In this case how long did it take?

"A It would be hard to say. We get them back sometimes in a week and sometimes longer.

"Q What's the longest they have ever come back?

"A I don't know right off hand how long it's taken them.

[43] "Q Well, by two months would you have them?

"A Should have, yes.

"Q Let's say thirty days?

"A Possibly.

"Q You should have them by thirty days, right?

"A If the work is not stacked up; you know, if it doesn't hit them down there.

"Q Well, do you have anything in your records or anything to indicate when you got the information, the rap sheet back?

"A Okay. In our records we don't have anything to indicate that we got the rap sheet, when it come back.

"Q You don't have anything that indicates you got the rap sheet?

"A No, sir.

"Q Well, did you and the City of Amarillo kind of change out information?

"A We do on occasions, yes.

"Q So the City is the one that arrested this man, Mr. McCollan, the first time, is that right?

"A That's right.

"Q So they would have had a rap sheet; isn't that right?

"A Yes, sir, they should have.

"Q And you would have had access to it; true?

[44] "A Yes, sir. If we would have went over there.

"Q All right. Then it would have been easy for you to find out what this man's rap sheet was; isn't that right?

"A If we would have went to the City, yes, sir, we would have had access to the rap sheet.

"Q Well, in this situation, it's a little stronger than that, isn't it? Do you remember your deposition on page thirty-seven where I asked you this question: So your department in all likelihood knew that at the time Linnie McCollan — and I was referring to the Plaintiff — was arrested in Dallas County that Leonard was using an

alias? And your answer to that was: Yes. Then you said: My I. D. people. Question: Should have known? Answer: Yes.

"A Right.

"Q Is that right?

"A At the time that we gave you that deposition it was my understanding that we would have had that information but checking further we found that the original arrest was made by the City and it was a transfer.

"Q Are you changing your testimony now?

"A I'm saying that we didn't have — after we left there, after we give you the deposition, I went back and went through my files and found that it was a transfer and we did not have a rap sheet because it was sent in by the City.

"Q So you're changing your testimony now?

[45] "A Yes. From that.

"Q Did you file your deposition?

"A Yes, sir.

"Q Do you change it in the deposition you filed?

"A No, sir.

"Q All right. Now, when you arrested this man known as Linnie McCollan — pardon me. When he was placed in your jail he had a driver's license, didn't he?

"A Is this Linnie McCollan, Leonard McCollan alias Linnie McCollan, the one you're talking about?

"Q Yes, sir.

"A Yes, sir.

"Q Do you have that driver's license?

"A I should have, yes, sir.

"Q And when did you take this? You took possession of this driver's license at some time, didn't you — your office did?

"A The Officer in my department had possession of it.

"Q All right. Well, that would have been what? In October?

"A Yes.

"Q Well, do you ordinarily take up someone's driver's license?

"A No, sir.

"Q Well, why was this one taken up?

[46] "A Because it was an altered I. D. or altered driver's license.

"Q How was that determination made?

"A By the information that was on the driver's license and the picture.

MR. LARSON: Let's have this marked.

(Plaintiff's Exhibit Number Five was marked for identification by the Court Reporter.)

MR. SORELLE: Your Honor, we would ask that the whole amount there be tendered. It was taken off and evidence tagged which has certain markings that identify the license.

THE COURT: Well, I would think that would be better than putting the Court Reporter's little stamp over some part of the driver's license.

MR. LARSON: Well, Judge, I don't know what this is (indicating).

THE COURT: Well, it's possibly just an identification of the license.

MR. SoRELLE: Your Honor, it indicates certain items of who had custody of the license and who took possession of the license and when the Sheriff's Department took possession of the license and so forth.

THE COURT: Well, that can be proved up.

MR. LARSON: I'm not interested in that. When I [47] saw the driver's license the first time —

THE COURT: I've ruled on it. It can be proved up.

"Q (By Mr. Larson) All right. Now this is the driver's license that one of your officers in your office took up from Leonard McCollan in October, 1972; is that right?

"A That's right.

"Q And you said it had been altered, who made that determination, did you or did someone in your office?

"A The officers in my office.

"Q What was altered about it?

"A They determined that the man's picture on here was not the man whose name and date of birth appears on the license.

"Q Well, after you learned that or after your office learned that, what did they do about trying to switch the

names around on all these warrants? Did they tell anybody?

"A No, sir. We didn't have that information in our I. D. at the time.

"Q Well, you said you got it in October.

"A Yes, sir. The man who had possession of this license was assigned to our metro unit.

THE COURT: Was what?

THE WITNESS: Assigned to our metro unit, which is — he offices out of the City Police Department.

[48] "Q (By Mr. Larson) Is he one of your deputies?

"A Yes, sir. These files are in the City.

"Q So one of your deputies knew that the picture on there was wrong, is that right?

"A Yes, sir.

"Q Well, was anything done about straightening out the picture — I mean straightening out the problem, there was a man who had a phony driver's license and who was using somebody else's name?

"A The only thing, this was taken into evidence and that's the only thing that was done on it at the time.

"Q So nobody told anybody that the man's real name was Leonard McCollan as the result of taking up this driver's license; is that right?

"A Not that I'm aware of.

"Q Now, later on in 1972 the bondsman, for whatever reason, he wanted to file some kind of application to go off his bond, is that right?

"A That's true.

"Q So we make everything crystal clear, the bond we're talking about that a bondsman had posted on behalf of Leonard McCollan who was using the alias of Linnie McCollan, is that right?

"A Yes, sir.

"Q Do you have that affidavit to go off his bond?

[49] "A Yes, sir.

"Q Now, as a sheriff, one of your functions is to take bonds on behalf of people; isn't that right?

"A Yes, sir.

"Q In fact, you're the only officer authorized to take bonds on behalf of people who are incarcerated; isn't that right?

"A Yes.

"Q You're the only person in Potter County?

"A Other than the Judge.

"Q But you keep the bonds, approve them and check out the bondsman's property and that sort of thing; is that right?

"A Yes, sir.

(Plaintiff's Exhibit Number Six was marked for identification by the Court Reporter.)

"Q (By Mr. Larson) Now this has been marked as Plaintiff's Exhibit Six, and that is the affidavit or the "motion of surety for warrant". In other words, the surety, the bondsman who posted the bond for Mr.

Leonard McCollan, wanted to go off his bond; is that right?

"A That's right.

"Q And that was granted?

"A Yes, sir.

"Q And what happens when that is granted?

[50] "A When this is granted, then a warrant is received in our department for the subject.

"Q All right. Well, this is dated the third day of November, 1972. So that would be the date that a warrant was issued for him; is that right?

"A Yes, it should have been.

"Q Do you have that warrant there?

"A Yes, sir.

(Plaintiff's Exhibit Number Seven was marked for identification by the Court Reporter.)

"Q (By Mr. Larson) We have had this marked as Plaintiff's Exhibit Number Seven. Now, that's the warrant that was issued as a result of the bondsman's actions in this case?

"A Yes, sir.

"Q Now I notice that the warrant says: "You are commanded to take the body of Linnie Carl McCollan". There is nothing on here to indicate that he was using an alias.

"A No, sir.

"Q Why not?

"A I don't know, sir.

"Q Well, one of your deputies had already taken up a driver's license and knew that he was using the wrong name; is that right?

"A That's right.

[51] "Q And you probably have access to a rap sheet that came back from Austin that indicated he was using the wrong name; is that right?

"A If he had went to the City, yes, sir.

"Q Well, in your deposition you said: So your department in all likelihood knew at the time that Linnie McCollan was using an alias, giving the wrong name, isn't that true? And you answered: Yes.

"A Yes, sir.

"Q Now, let's move forward a little bit, and when did your office first learn that the Plaintiff in this lawsuit was arrested?

"A The exact time, I don't know. It was around December 26th.

"Q All right. Well, how did you find that out?

"A By teletype.

"Q Do you have a teletype there?

"A No, I don't believe it is. I don't have the teletype.

"Q Do you know where it is?

"A No, sir.

"Q Did you get a phone call?

"A I don't know.

"Q Well, did anybody in your office get a phone call?

"A I don't know.

[52] "Q Have you done any checking around?

"A The man who was the head of my criminal division at that time is no longer with me and he's up in Oklahoma. He would have been the one who would have gotten the phone call if there were a phone call.

"Q All right.

"A He would have either got the teletype or the phone call.

"Q What did your — you got this notice on the teletype that my client had been arrested, or at least a Linnie Carl McCollan had been arrested. What did you do about that?

"A Okay. As with any warrants or any people that's arrested on warrants, then we send someone as soon as possible. As soon as we have a car or a man available we send them and pick them up if they have not made bond at that time.

"Q So did you send someone to pick up Mr. McCollan?

"A Yes, sir.

"Q When was that?

"A On the 30th, I believe, 29th or 30th.

"Q All right. I have an old calendar here and it indicates that the 26th fell on a Tuesday.

"A Yes, sir.

"Q Is that —

THE COURT: Now, this is the 26th of 1972?

[53] MR. LARSON: The 26th of December, 1972.

"Q (By Mr. Larson) Does that coincide with your recollection?

"A I don't know. Let me look at the calendar.

"Q All right.

"A Right. It is on a Tuesday.

"Q. Now, did y'all send any photographs or fingerprints or anything down to Dallas to find out to be sure that you had the right guy?

"A Not to my knowledge, no, sir.

"Q Well, you do that now, though, don't you?

"A Yes, sir.

"Q And part of the reason you do that now is because of what happened in this situation, then; is that right?

MR. SORRELLE: Your Honor, I'm going to object to this line of questioning. I think what the Sheriff's office does or doesn't do now is clearly —

THE COURT: I'll sustain the objection.

"Q (By Mr. Larson) Well, that's the ordinary thing done at Sheriff's offices about your size; Isn't that right? You have checked around and learned that the ordinary practice is that they forward a copy of the man's pictures and fingerprints to be sure they have the right one; isn't that right?

"A Usually you don't forward one if you go. You take [54] them with you.

"Q Well, you didn't get down there until the 30th, which was the following Friday. That was four days later?

"A That would be the 29th, I believe, would be Friday, wouldn't it?

"Q It was a Friday. Well, that was the 30th, wasn't it?

"A Was the 30th on Saturday?

"Q Well, all right, it's the 29th. I stand corrected.

"A Twenty-ninth.

"Q Twenty-ninth, all right. Well, do you have anything in your file to indicate what time this man got to your jail?

"A Just the date, not the time.

"Q All right. What date is that?

"A On the 30th.

"Q Thirtieth?

"A Yes, sir.

"Q Well, that was the day he was checked into your jail?

"A Yes, sir.

"Q Now, you have a policy in your office that you're supposed to, as soon as a man is arrested and brought in, you take him to I. D.; isn't that right?

"A No, he's taken to the jail.

[55] "Q You don't check to be sure you have the right person?

"A The people up in the jail check your I. D.

"Q Well, when did Mr. McCollan get let loose?

"A On the 2nd, I believe.

"Q The 2nd of January, 1973?

"A Yes, sir.

"Q Well, he was booked in your jail on the 30th, but he wasn't let go until the 2nd. Why did it take so long to figure out you had the wrong one?

"A Okay. The 30th, of course, is on Saturday with the 1st being a holiday. There was no one in I. D. during the weekend or the holiday, and then the 2nd is when all of the jail work and the paper work comes through.

"Q So you're saying that on the weekend it's not—and on holidays it's not important to be sure that you've got the right person?

"A No, I'm not saying that. I'm saying that we didn't have anybody in I. D., you know, at that time.

"Q Well, don't the jailers, as just a practice, you know, take pictures and fingerprints of folks when they bring them in?

"A Yes, sir, but they can't take—after they take the picture and fingerprints they have to check through I. D.—the paper work has to go through I. D. before you've got any.

[56] "Q Well, where is I. D. in juxtaposition to your jail?

"A Okay. Our jail is on the seventh and eighth floor of the courthouse and the identification and records is on the main floor, south end.

"Q Well, did anybody ever take the Plaintiff's picture and fingerprints?

"A I don't really know at this point. I can't find any in our records.

"Q Well, now, in your deposition you told me they got tore up.

"A Well, this was the instructions that I had—that we give them if it has been taken to tear them up and destroy them.

"Q So that's what happened to the Plaintiff's pictures and everything, they got tore up?

"A Yes, sir. If they were taken, they were torn up.

"Q Well, now, you're not even certain if they were taken or not?

"A That's right, sir.

"Q All right. Well, now, did your deputies that went down here to Dallas to pick up the Plaintiff, did they have a warrant?

"A Yes, sir.

"Q Can you show us that warrant?

[57] "A I believe you've got it.

"Q Well, now—

"A This would be the warrant they had.

"Q Well, now, on the back side of this it says: "Came to hand 31st day of November," it looks like '73 but you can't tell because it's been scratched out. It looks like it had a four in there at one time. And it's executed the 21st of January, 197... and then it might be 3 or 4.

Now, this can't be the warrant because it's not executed with the proper date on it. If you went down there—if your deputies went down there on the 30th.

"A This warrant is the one that they picked him up on and they brought him back and he was released before he

was taken before the magistrate and so he wasn't taken back to the magistrate and, therefore, the warrant wasn't executed.

"Q Well, you mean you don't execute — you don't fill out the little execution on the back until later on?

"A Not until you take him back before the magistrate that issued the warrant.

"Q Well, now, Leonard McCollan had already been before the magistrate?

"A Not on this warrant. This is on the bond withdrawal warrant.

"Q Now, I started to go into an area a while ago and I want to go back to it.

[58] Isn't it standard procedure in offices — sheriff's offices of your size and counties of your size to send pictures of the person who's wanted along with the fingerprints; isn't that standard in —

"A At what time?

"Q Well, at any time.

"A Whenever they go to pick up someone?

"Q Yeah.

"A If there's any doubt of their identity they do, yes.

"Q Well, now, you already had some doubt of the identity, didn't you?

"A At that time, no, sir, I didn't.

"Q Well, somebody in your office did, didn't they?

"A Possibly the man that handled Leonard the first time probably did.

"Q And whoever got that driver's license knew it, too, didn't they?

"A That would have been the same man — one and the same man. One and the same officer.

"Q And he doesn't work for you any more?

"A No, sir, he still works for me.

"Q Well, what reason did he give you for not telling you?

"A It probably wasn't even brought to his attention [59] the man was arrested. At that time he was working in metro.

"Q Well, I know it, but he had arrested somebody in October or in December — pardon me, in September, and he had taken up a driver's license because it had the wrong picture on it and he didn't tell you about it?

"A No, sir.

"Q No reports made of it?

"A If they were, they were in his file.

"Q Well, you were relying on your deputies to do the right thing, weren't you?

"A Yes, sir.

"Q And you were a new sheriff and weren't aware of all the procedures; is that —

"A At the time this was discovered by that deputy, he worked for the previous sheriff, and this case — in other words the first arrest and everything was back before I was made sheriff, so I wouldn't have known. The warrant was already in our file.

"Q So you were new and relying on all your deputies to do the right thing; is that right?

"A Yes, sir.

"Q When you found out that you placed your reliance on the wrong people did you do anything about it?

"A Yes, sir.

"Q What?

[60] We —

MR. SoRELLE: I'm going to object to what was done or not done on the basis of being irrelevant to what the action is in this case.

THE COURT: Well, are you asking about a change in policy or what was done with reference to this particular matter?

MR. LARSON: The latter.

THE COURT: Well, I'll overrule the objection to what was done with reference to this particular matter.

"A We changed our policy on — after this one was —

THE COURT: Well, now, I'll sustain the objection to changing policy about it. I don't think that's material. It's what happened on this occasion.

"Q (By Mr. Larson) Did you do anything to this deputy?

"A No, sir.

"Q Why not?

"A I felt like the deputy had done his job.

"Q Then you approved of the job the deputy did?

"A No, sir.

"Q Well, you felt he had done his job?

"A Yes, sir. The policy at that time. He continued as he had been and —

"Q Isn't it important, Sheriff, that if you've got [61] information that indicates that you got — the man is using an alias name, isn't it important that somebody gets to know about this?

"A Yes, sir.

"Q You just don't leave that sitting in your file; isn't that right?

"A It depends on the case at hand whether it would be left in those files or not.

"Q But the standard policy in all sheriff's departments of your size is when someone is arrested out of county or out of state that photographs and fingerprints are taken to determine whether or not they got the right person; isn't that right?

MR. SoRELLE: Your Honor, I'm going to object again. He's asking about something irrelevant, what the standard policy is in all departments and I object on the basis that it's not relevant to this litigation.

THE COURT: I'll sustain the objection.

MR. LARSON: Your Honor, may I address the Court?

THE COURT: Yes.

MR. LAWSON: In his deposition — well, maybe I shouldn't tell it in front of the jury.

THE COURT: Well, let's take a recess right at this time, ladies and gentlemen. About a fifteen minute recess.

[68] MR. LARSON: Before you leave the bench, I have another witness and the City Attorney agreed to produce

him and he's a police officer and left the City Attorney where he could be reached and the City Attorney has tried this number and it's not a working number. This witness is going to be out of pocket and there's a problem about trying to find him and I just want the Court to realize that I may have to call a witness out of order tomorrow.

THE COURT: All right.

(A recess was had.)

THE COURT: All right. Bring in the jury.

(Jury in.)

THE COURT: Let's proceed.

#### CONTINUING DIRECT EXAMINATION

BY MR. LARSON:

"Q Shortly after this incident occurred you made a determination of the standard kind of operating procedure in counties the size of Potter County do in regards to when someone is arrested outside the county; isn't that true?

"A Yes.

"Q So the procedure you found out was that mug shots and fingerprints would be mailed down as soon as the notice of a warrant—notice of arrest to someone wanted under a warrant; isn't that the standard procedure?

[69] "A It would either be mailed or taken down.

"Q Yes. Well, did any of your deputies mail anything down to Dallas to the Dallas Police Department?

"A No, sir.

"Q Did either of your deputies take much mug shots or were the fingerprints with them when they came down to Dallas to pick him up?

"A No, sir. Not to my knowledge.

"Q Have you made any determination of what information was on the computer with the National Crime Investigation Center—Information Center, pardon me, at the time or just prior to the time that the Plaintiff was arrested in Dallas?

"A No, sir. I don't know what was all on there. I don't know exactly what was in there because there's a number of different things that you can put in the computer.

"Q For example?

"A For example, you can put all the information that you have on the subject, his name, date of birth, DL number if you have it, warrant, what he's wanted for and the charge and any other information that you might have at that time.

"Q Like what?

"A Well, like physical description if you have any.

"Q Well, how about the numbers that indicate what kind of fingerprints a man has?

"A No, sir, we usually don't put any fingerprint [70] classification in there.

"Q So you don't know what was in the NCIC computer just at the time this man was arrested?

"A No, sir. This was put in prior to me being in the sheriff's department.

"Q Well, have you made any investigation to find out?

"A Okay. When they are arrested, then that information is cancelled out of your computer and you cannot retrieve it.

THE COURT: I believe if you would sit back a little, Sheriff and not so close to that mike it might do better.

"Q (By Mr. Larson) Now, Sheriff, if you would, describe the vehicle that you used to transport prisoners from one county to another; do you have more than one or do you use primarily just one vehicle?

"A We have a station wagon and then we use any other cars. It depends on what car is available, just a regular patrol car. But, it depends on what car is available at the time.

"Q Can you tell us what pressing business there was that prevented you from going from Amarillo to Dallas, waiting four days? Can you tell us what it was?

"A As far as knowing exactly what it was at that time, the reason we didn't send anybody the next morning, I . . .

. . . [82] arose, what did you spend your time doing these as Sheriff of Potter County?

"A Mostly just administrative work, trying to find out just what the department was doing and if here was any areas that needed changing, what changes to make and just really getting my feet on the ground as to what kind of department I really had at that time.

"Q Did you come in and institute immediately new policies and new procedures in the office?

"A No, sir.

"Q What procedures and policies was the office running by when you took over?

"A They were running under the old policies of the previous sheriff.

"Q What had happened to the previous sheriff?

"A He had died in office.

"Q Was it an expected death or was it sudden?

"A No, sir. It was a sudden death.

"Q How many employees did you inherit, so to speak, from the old sheriff's department to the department that you had during the month of December of '72?

"A All but two of them, of the people that was previously hired were rehired.

"Q In response to a question earlier as to three sets of fingerprints being taken by your department, when are [83] three sets of fingerprints taken of an arrestee?

"A When the arrest is made by the sheriff's department?

"Q That is made under your order or made by your officers?

"A Made by my officers.

"Q Well, what if an arrest is made by, say, the police department and an individual is transferred to your department, do you make three sets of prints then?

"A No, sir.

"Q Why not?

"A Because it shows as just a transfer and the FBI card and DPS card are made over at the police department and it cuts out the duplication of making an extra set of prints — two sets of prints.

"Q You mentioned earlier that one of your deputies had some sort of notice of a driver's license that was on the Linnie Carl McCollan who was arrested in October of 1972. Who was that deputy?

"A Okay. That would be Ed Porter.

"Q Was he assigned to your office at that time?

"A No, he was a deputy working for me, assigned to metro, but his office was in the City police station.

"Q What is metro?

"A It is an intelligence unit that has in it one [84] deputy from my department, one from another county, and then one from another county and the City of Amarillo and the City of Canyon have men in it, and it's a specialized unit.

"Q What did they work with primarily?

"A Mostly they work on vice and narcotics.

"Q During this time period did you have direct daily control over the procedures and activities of Ed Porter?

"A No, sir. They would be as it is now. There are lots of times that go by that we may not see that deputy for as much as two or three weeks.

"Q He didn't report to you day to day as to his activities?

"A No, sir. He reports directly to the metro unit and to their coordinator and works directly under him.

"Q Did Mr. Porter office in the courthouse where your sheriff's offices were?

"A No, sir.

"Q Were any of these records under anyone's control other than Mr. Porter at that time?

"A No, sir. Just the coordinator of the metro unit, because they were housed at the police department.

"Q Is he under your control?

[85] "A No, sir.

"Q Did you have any authority over metro and its policies or procedures?

"A No, sir. Not at that time.

"Q How is metro funded?

"A It's funded through a criminal justice grant.

"Q What is that?

"A It's funded through the State Criminal Justice Division.

"Q Is that a Federal grant?

"A Yes, it's a Federal grant.

"Q Who sets the policies and procedures of metro intelligence?

"A The Board of Directors.

"Q Referring back to the question that you answered then, although Mr. Porter was your deputy and you say that he may have had notice of this driver's license, was there any reason for that notice to have been reported to you or anyone under your direct control?

"A No, sir.

"Q Why not?

"A If it was a pending case worked out of metro then the case, until it is completed, is kept and held in metro.

"Q Were any of those metro files available to you or any of your deputies other than Mr. Porter?

[86] "A No, sir.

"Q Even if you had requested them?

"A The only ones that — we would have to request them through the D.A.'s office.

"Q You indicated earlier that you had two photographs before you of Linnie Carl McCollan and you identified those photographs, one that's been marked Plaintiff's Exhibit Number Two. And can you identify who took that photograph and what the date was?

"A Yes, sir. This is the Amarillo Police Department photo in October of 1972.

"Q And Plaintiff's Exhibit Number Three, can you identify from looking at that photograph when it was taken and by whom?

"A Yes, sir. This was taken by the Sheriff's Office on September 11, 1972.

"Q The warrant you had earlier referred to, issued on the 5th of October, 1972, being Plaintiff's Exhibit Number One, was this issued apparently after the photograph that was taken in Plaintiff's Exhibit Three?

"A Yes, sir.

"Q Would that indicate that there might have been an earlier warrant issued back through your department for Linnie Charles McCollan?

"A Yes, sir.

[87] "Q Or, Linnie Carl, I'm sorry. Would that be the indication?

"A Yes, sir.

"Q Can you tell from looking at the picture which is Plaintiff's Exhibit Three what the particular offense might have been that the Defendant Linnie Carl McCollan was arrested for?

"A No, sir.

"Q Further examining Plaintiff's Exhibit Number Four, which is microfilm copies of the same photograph, as is Exhibit Three, plus a fingerprint card, can you tell by examination of the copy of that card when those prints were made?

"A Yes. These were made on the 9th and 11th of '72.

"Q Would that have been prior to the warrant that was issued on the 5th of October of '72?

"A Yes.

"Q Does that or does not that indicate to you, Sheriff Baker, that there was a Linnie Carl McCollan that had been handled by your department earlier than October 5th of 1972?

"A Yes.

"Q Do any of those records in any respect whatsoever show an alias of Leonard McCollan?

"A No, sir.

"Q Were you or anyone in your department — in your [88] I. D. section or your department aware that there was

anyone but a Linnie Carl McCollan, that one individual, any time during the months from September, 1972, until January 2nd of 1973?

"A No, sir.

"Q You were unaware that there were two McCollan brothers?

"A Yes, sir.

"Q There was no indication on any records from the FBI or any other source that there might be another McCollan named Leonard McCollan?

"A No, sir.

"Q The pictures that you have identified as being Linnie Carl McCollan, are they of this Plaintiff?

"A No, sir.

"Q Let me refer also, Sheriff Baker, to your comment about checking a rap sheet to see if there might have been an alias used. Did your department receive, as far as your records show, any type of rap sheet that would give you notice that there was another Linnie Carl McCollan anywhere else in the world other than the one that you have pictured there?

"A No, sir.

"Q You mentioned that the City might have a rap sheet. Did you know that the City had a rap sheet?

[89] "A No, sir.

"Q Did they have a rap sheet?

"A I didn't check.

"Q You don't know today?

"A I don't know whether they have one or not.

"Q So when you say that your deputies knew that there was an altered driver's license, in fact you were referring to Mr. Porter, were you not?

"A Yes.

"Q Who didn't work under your control at that time?

"A No, sir. He was in the metro unit.

"Q Who took that driver's license into evidence?

"A Mr. Porter.

"Q Did he take it in as an authority as your deputy?

"A Yes, working in metro.

"Q Did you know that that driver's license was in evidence anywhere?

"A No, sir. This was all taken into evidence back before I was Sheriff.

"Q When was the first time you ever saw that driver's license that you're holding there and refer to it, please, by the Plaintiff's Exhibit on the back?

"A This exhibit, Number Five, the first time I seen this driver's license was on January 2nd, when we released Mr. McCollan.

[90] "Q Of 1973?

"A 1973.

"Q Had you no knowledge of that license before that time?

"A No, sir.

"Q Looking at the picture on that license, do you find that picture to be of this Plaintiff?

"A No, sir.

"Q Do you find the name to be Linnie Carl McCollan or Linnie C. McCollan?

"A Linnie C.

"Q And the birthday of 12/8/48?

"A Yes, sir.

"Q And a Texas DL number thereon?

"A Yes, sir?

"Q Have you or any of your deputies done subsequent investigation to see whether or not that birthdate in that driver's license number is the one commonly used by this Plaintiff?

"A Yes, sir, it is.

"Q Did you have a conversation with this Plaintiff about that fact on this day of the 2nd of January, 1972?

"A Yes, sir.

"Q '73, I'm sorry.

"A '73.

[91] "Q Did he acknowledge that to be his name and license number and birth date that he used on his driver's license?

"A Yes, sir. He said that this was his driver's license, date of birth, with the exception of the picture.

"Q Did he make any comment to you at that time about that being his brother pictured on the license?

"A Yes. He said that was his brother's picture on the license and that he was using it — using his name again.

"Q Using his name again?

"A Yes.

"Q Did he indicate how the brother had secured that particular driver's license?

"A No, sir.

"Q Referring back to your answer concerning the photographs and fingerprints that may or may not have been made of this Plaintiff when he was brought into your jail, do you know now, today, Sheriff Baker, whether or not there were any photographs made of this Plaintiff when he was arrested in December of '72?

"A No, sir.

"Q Do you know whether there were any fingerprints made at that time or not?

"A No, sir.

"Q If there had been, what were your orders in that regard?

[95] "Q Do you hold any positions in the State presently that are appointed by the Governor that has to do with jail standards and conditions?

"A Yes, sir. I'm on the Board of — Commission of Jail Standards.

"Q And when were you placed on that Board?

"A October the second of this year.

"Q Referring back to the time of the facts of this case, did you have personal contact or personal knowledge of any of these facts until January 2nd of 1973?

"A No sir.

"Q Did anyone prior to that time take any action under your direct control or at your direct order to do or not to do anything as to this particular Defendant?

"A No, sir.

MR. KNORPP: I'll pass the witness to Mr. SoRelle.

CROSS-EXAMINATION

BY MR. SoRELLE:

"Q Do you know where you were between the dates of December 30th, 1972, and January 2nd, 1973?

"A No, sir, not off hand. I was either at home or at my father-in-law's, which would be out in the country.

"Q Were you keeping regular office hours during that period?

"A No, sir.

[96] "Q Did you have communication with your office?

"A Yes. By telephone and radio.

"Q If there had been a problem in the jail, would someone have communicated this to you?

"A Yes.

"Q Had you, back at that time, notwithstanding your other items we have discussed, set up procedures for receiving information when a problem, something out of the ordinary occurred?

"A Yes.

"Q How did you receive communication from the jail?

"A We received it from supervisors up there, as well as any problems that we were having there, the inmates can write a letter and it comes directly to me there in the sheriff's office every morning — comes up to my desk every morning.

"Q Was this procedure in effect at that time?

"A Yes.

"Q Did anyone during this period of December 30th to January 2nd notify you of the presence of Linnie McCollan in your jail.

"A No, sir.

"Q Did anyone notify you of any complaint or problem about his presence there, then or at any time afterwards?

"A No, sir.

[97] "Q When was the first time?

"A The first time I was notified was on January 2nd.

"Q Right. And as soon as someone told you about the fact that there was a question about this man being in jail, what was your initial action?

"A As soon as the problem was brought to my attention, well, I told them to go get him and bring him down out of the jail and down to the captain's office and we would talk to him there.

"Q And who was this that came in to talk to you at that time?

"A Ed Porter.

"Q All right. And this is the man that you have discussed here earlier with the metro unit?

"A Yes.

"Q And did he hand you something or give you anything that caused you to support his statement that this was not the man that he had previously arrested?

"A Yes. He showed me this driver's license.

THE PLAINTIFF: That's a lie.

"Q (By Mr. SoRelle) What did you do then with respect to — was anyone else involved in any of these conversations that you had?

"A Yes. After talking with Mr. Porter we did bring Mr. McCollan down to the captain's office and talked to him [98] there in the captain's office with Kenneth Chambers and Mr. Porter. And Mr. Chambers, of course, is no longer with me.

"Q Now, I think you — and you made the determination on your own that he would be released; is that correct?

"A Yes, sir.

"Q What did you do then?

"A We released him to come back to Dallas.

"Q Did you have someone to provide transportation?

"A Yes. The bondsman, Mr. Carter, — Johnny Carter, advised us that he would provide him with transportation back to Dallas?

"Q Is this the same bondsman that caused the warrant to be issued?

"A Yes.

"Q There was a discussion earlier concerning delays in time when someone has mug shots taken and comparison

by I. D. at some future time. As a matter of fact, you have to develop these photographs, do you not?

"A Yes.

"Q Is there any lag time just from the standpoint of developing?

"A Yes. It depends on — back at that time it took longer because we had an old processer and developing took longer. They would take the pictures and take them down and develop them and it would take some day or two sometimes, [99] depending on how many pictures we had.

"Q Now, did you offer to assist the Plaintiff in any other way at the time he was released?

"A Yes. He told me that when he was arrested here in Dallas that he was working at that time for a messenger service or something of this type and that he had lost his job by being arrested, and I advised him that when he got back to Dallas that if he would contact his supervisor and have his supervisor call me that I would verify that he wasn't the Linnie McCollan that we were looking for. And in about two days — I forget, it was two or three days, anyway, his supervisor did call me and I did verify that he was in our jail and that he wasn't the one we wanted.

"Q You verified that he should not use this arrest as a basis for —

"A Right. That he wasn't the one.

"Q All right.. Sheriff, you weren't I take it, pleased with the fact that there was some confusion about the identity of this man?

"A No, sir.

"Q But from the standpoint you were asked about before of the deputies, certainly you do not — did not condone anyone arresting the wrong man?

"A No, sir.

"Q And at this time, was it your belief that there [104] know what you were doing, is that a fair statement of what you said yesterday?

"A I think I said that I was new and a lot of this happened before that I became Sheriff, and I wasn't aware of all of it, I think that would be a more correct statement on it.

"Q Well, then, you're not trying to tell the jury you're not qualified to be Sheriff?

"A No.

"Q Okay. Now, Sheriff, I believe you testified that this Mr. Porter, I believe his name is Ed Porter, is that right?

"A Yes.

"Q Was working as a metro squad officer, is that right?

"A That's right.

"Q Well, now, was that his only job?

"A Yes. He worked metro and the way I work a metro agent, in metro he works there, then he has his duties in I. D. He works back and forth from I. D. to metro.

"Q And he's the one who figured out they had the wrong one in jail?

"A Yes.

"Q Well, now, in your deposition, you testified thusly on page thirteen, what had this deputy done that [105] made him believe that he had the wrong person in jail and you answered that Mr. Porter at the time was working in I. D. He works kind of relief in I. D., I. D. as well as the jail. He works the dispatcher's stand but at the time he was working in I. D., when the process of the papers came through I. D., this is when he had Mr. McCollan but it was the wrong one in checking these records, their records.

And I asked this question, what papers did he process through and you answered the normal papers that process through our jail which would be the warrants and our jail records. He also handled the mug and printing up in the jail and goes up into the jail and takes money and fingerprinting and jail work and takes it down to I. D. to check previous records, or whatever.

"A At the time I gave that deposition that was exactly what I thought Ed was doing at that time. But upon getting back to the office and along about this time Mr. McCollan was arrested and brought down is when a lot of changes were being made in my personnel and he was working over in metro and I. D. also. In other words, he was working two or three jobs there.

"Q So he was working in I. D., too?

"A Yes.

"Q At the time Mr. McCollan was in jail?

"A Yes.

[106] "Q And he's also the same one that picked up his driver's license?

"A That's right.

"Q Well, now you didn't change your deposition that you filed with the Court, did you?

"A No.

"Q All you're doing today then, as I understand, you're just adding —

MR. SoRELLE: Your Honor, I'm going to object to the continual questions concerning the changing of depositions because it is prejudicial in that it indicates he could have or should have when in fact that is not correct.

THE COURT: Well, I will overrule the objection, however, let's not argue with the witness except finding out what he is testifying to.

MR. LARSON: I will withdraw the question. It was argumentative, Judge.

THE COURT: All right.

"Q All right, Sheriff, one thing I want to be clear about is up in the jail or somewhere in your department you keep a file on everybody that you have arrested, isn't that right?

"A In I. D.

"Q And you call that a folder?

[107] "A Yes.

"Q Well, tell the jury all the things which would have been in the folder for Leonard McCollan at the time he was arrested, say, in October.

"A Okay. In October all we would have in our folder about him being arrested, talking about Leonard McCollan, by him being arrested at the City, he was arrested as Linnie McCollan and he was transferred as that. And so all we

would have in our folder was the transfer, a P-3 on where he was arrested over there and they make a copy of that P-3 and bring it over to us and then that goes in our file as the court files come down and as he goes through the jail.

"Q What's a P-3?

"A It's the original piece of paper that you book someone in on.

"Q What information is contained on that?

"A Okay. The information that is contained on it is the man's name, his date of birth, his address, his next of kin and pertinent information about him and the small details of the arrest, the arrest warrant whether it was an on sight arrest or what type of arrest it was.

"Q Do you have that P-3 here?

"A I don't believe we do. It should be on the microfilm.

MR. LARSON: Which one is it?

[108] MR. SoRELLE: Your Honor, may we have the deposition?

THE COURT: Yes.

MR. SoRELLE: I'm sorry, Sheriff Tate's deposition.

MR. LARSON: While he is looking for that, Sheriff, I will ask you a few other questions.

"Q The Sheriff's Office had already taken a picture of this man on September 11, 1972?

THE COURT: Which man are we talking about, Leonard or Linnie?

MR. LARSON: Leonard McCollan.

"A Yes.

"Q That would have been in the folder too, wouldn't it, this photograph?

"A Right, but this folder that he is taking there is Linnie C. McCollan.

"Q It would have been in the Linnie C. McCollan —

"A It would be —

THE COURT: One at a time. Let him finish. Sheriff, you let him finish his question and Mr. Larson, let him finish his answer. Don't talk at the same time.

MR. LARSON: I'm sorry, Your Honor.

THE WITNESS: I apologize.

[109] "Q All right. So we make it perfectly clear, this photograph would have been in the file named Linnie McCollan in your office in September and October of 1972, is that right?

"A September, yes, Linnie Carl McCollan.

"Q And this same photograph would have stayed in that folder all the way up from that time to the present time?

"A Right.

"Q And for the record, I have been referring to Plaintiff's Exhibit Number Three, is that right?

"A Yes, sir.

"Q So, Sheriff, it would have been a rather simple thing to do if someone said that he wasn't the person that was wanted, it would have been a simple thing to pull the file and pull out the picture of the person in the file and see if it matched up with the real person, isn't that right?

"A As soon as it's processed and went all through it would have been.

"Q The very instant he came to jail it would have been simple, too, wouldn't it?

"A They would go through the normal process.

"Q Well —

"A It wouldn't be just a matter of him saying I have got the wrong man and that's it. In other words, he would have to be processed on through to see.

[110] "Q It's not important for you in your county to find out if you have got the right person or not?

"A Yes, that's the reason that it would be necessary for you to take the time and go through the process to make sure who you were talking to in jail if there was some doubt.

"Q Sheriff, it took you four days to figure out you had the wrong man.

"A There was four days elapsed, there, yes.

"Q It would have been a simple thing to just open up the file and look at the picture and you would have known instantaneously that you had the wrong person, right?

"A No, the picture alone wouldn't have done it.

"Q Why not?

"A You need to go through all of your file and you need to know who you were talking to, who you had in jail.

"Q Well, now, you're not telling the jury that Plaintiff's Exhibit Three looks like the man sitting over here, are you?

"A No.

"Q Well, what is it? I don't understand it. What is it that would have been so hard for you to have pulled out that photograph and looked at this man and said it wasn't the same person?

"A Okay. What we had to do or would have had to have done would be to pull the folder out and make sure by [111] fingerprints and everything that we had the correct picture in the file.

"Q Well, you had fingerprints, too, didn't you?

"A Yes, so it would be necessary for us to have, you know, both of them.

"Q Well, if you had pulled the file out and found the picture in there, you would have been kind of worried, you would have done some further checking immediately, isn't that right?

"A Yes, sir.

"Q But nobody did that in your jail, isn't that right, until four days later?

"A That's right.

"Q All right. Now, Sheriff, I believe your lawyers have found the forms.

"A Yes, sir.

"Q Is that what would have been in his folder?

"A Yes, sir, this is the P-3 and then here's your jail card.

"Q All right. Now, what you referred to as a P-3 and the things that would have been in the folder in October 1972, that's in front of you now?

"A Yes, sir.

"Q And that has been marked as Plaintiff's Exhibit what number?

[112] "Q Number Nine.

MR. LARSON: We offer Plaintiff's Exhibit Number Nine.

MR. SoRELLE: No objection.

MR. KNORPP: No objection.

THE COURT: It's admitted.

"Q All right. Sheriff, we have established that there would be Plaintiff's Exhibit Number Nine and Plaintiff's Exhibit Number Three in your folder?

"A Yes, sir.

"Q And then you said there is some fingerprints, right?

"A Yes, sir.

"Q And that would have been in the file, too?

"A Yes, sir.

"Q Do you have those?

"A Yeah, I think this would be another one of the exhibits.

"Q That would have been Plaintiff's Exhibit Number Four?

"A Yes, sir.

"Q So would anything else be in that file?

"A That would be all.

"Q Plaintiff's Exhibit Four, Plaintiff's Exhibit Nine and Plaintiff's Exhibit Three would have been in the file, is that right?

[113] "A Yes, sir.

"Q All right. Now, Sheriff, would you help me refresh my memory as to the sequence of events? You have a photograph dated September 11, 1972, is that right?

"A That's right.

"Q And that has been marked as Plaintiff's Exhibit what number?

"A Number Three.

"Q All right. Now, that photograph was made prior to the one that's down at the Amarillo City Police Department, is that right?

"A Yes.

"Q Now, that photograph was made when that man, Linnie McCollan, who we know to be Leonard McCollan, was placed in your jail?

"A That's right.

"Q Now, the fingerprints, were any fingerprints taken September 11th?

"A Yes.

"Q Are those the ones that you have up there in front of you?

"A Yes, Plaintiff's Exhibit Number Four.

"Q All right. Now, on September 11th that would have been also at the time when you would have taken the fingerprints or the FBI and Department of Public Safety, is that [114] right?

"A If he was arrested, if he was put in the Potter County Jail. I think once he was transferred over on the shoplifting

charge and arrested by the City of Amarillo. This is a copy of the prints.

"Q Well, now, somebody sent down to the Department of Public Safety for a rap sheet at some time or another?

"A That would be the City of Amarillo.

"Q What happened to the case that he was charged with in September, 1972, was he bonded out or what?

"A I don't know to my knowledge on this one.

"Q How do you know that's a transfer from the City?

"A On it there is no other paper work on it in my file and you wind up over here on this with just information only, you know, that you transferred from the City on it.

"Q What other information would be in it if it wasn't a transfer?

"A If it wasn't a transfer you would have your complete offense reports and everything.

"Q All right. Sheriff, at page thirty-seven of your deposition you testified thusly, when Leonard McCollan was arrested in Potter County and taken to your jail, he was fingerprinted and the fingerprint card was sent to the Department of Public Safety. You answered right. Question: Ordinarily they would classify them and send you back a rap [115] sheet. Answer: Yes. And the orders are very high. The department had gotten back a rap sheet. Answer: Yes. On Leonard McCollan it would have indicated he was using the wrong name, isn't that true. Answer: Yes. Question, so your department in all likelihood knew at the time that Linnie McCollan was arrested in Dallas County that Linnie McCollan was using an alias, giving you the wrong name,

isn't that true? Answer: Yes, my I. D. people. Question: Should have known. Answer: Yes.

Is that your testimony?

"A Yes, it was at the time.

"Q And now you're changing it?

"A No, sir. What I am saying is when we got back — yes, when we got back — yes, when we got back the rap sheet was in the file because it was a transfer. It should have been in the file. If it had been noted on there if it had been a sheriff's office arrest, but it was a transfer.

"Q Well, is the deposition in error?

"A No, sir. You asked me if he was arrested in Potter County in the deposition. If he was arrested in Potter County we should have a rap sheet, sent off for the rap sheet, but if it's the City of Amarillo, as I explained yesterday we only get the rap sheet, the one sent to us for the Dallas District Attorney or County Attorney, wherever the case is.

[116A] "Q Well, now, Sheriff, you testified yesterday, I believe, that this driver's license was taken up, this driver's license which we have entered into evidence marked Plaintiff's Exhibit Number Five?

"A Yes, sir.

"Q It was taken because the police officer took it up and determined that it was an illegally obtained driver's license, is that right?

"A Yes, sir.

"Q Well, now, Sheriff, I sent you some written interrogatories, do you know what I am talking about?

"A Yes, sir.

"Q And do you remember the answer to one of those questions I sent you? I asked you, have you, your attorneys, or any other person employed by you or your attorneys, inquired or have possession of the Texas driver's license which exhibits the Plaintiff's name, but does not contain the Plaintiff's photograph. You answered that one, yes. Then the question I asked you was if the answer to the previous question was affirmative, state the following: (a) the date the license was acquired and the name and address of the person who acquired the license. And you answered that the license in our possession acquired the seventh of October by Ed Porter, Potter County, Amarillo, Texas. Paragraph (b) I asked you to name the present address from which the license [117A] was acquired and you answered that the license was acquired Leonard McCollan, also known as Linnie C. McCollan who resided at 1940 Northwest Fourteenth, Amarillo, Texas. Defendant does not know the present address of Leonard McCollan. And then I asked you the reason why possession of it has been retained and you answered that the license was retained to establish the identity of a man who was charged with the sale of drugs in Amarillo, Texas.

Are those your answers?

"A Yes, sir.

"Q You signed that on April 8, 1975, under oath, is that right?

"A Yes, sir.

"Q Well, which is it? What you said yesterday or what you said here? Or is it both?

"A I don't understand your question.

"Q Well, yesterday you said it was taken up for another reason and today you say it was taken up to establish the identity in this interrogatory.

"A It was taken up for both. It is an altered driver's license to establish the identity of the man.

"Q Why didn't you tell me all of it when I asked you this question here in writing?

"A I don't know.

"Q Sheriff, now yesterday I believe you testified [118A] that Plaintiff's Exhibit Number Seven was the warrant that your deputies apparently carried down to Dallas, is that right?

"A Yes, sir.

"Q But it shows an execution on an unascertainable date because the names, I mean the dates have been marked out, is that right?

"A The dates have been marked out, yes, marked over.

"Q You didn't execute that, somebody on your behalf did?

"A Yes, sir.

"Q What's that man's name?

"A Price Adair.

MR. LARSON: Would you mark this as Plaintiff's Exhibit Number Ten?

(Plaintiff's Exhibit Number  
Ten marked for identification.)

MR. LARSON: Would you gentlemen like to inspect this before I show it to him?

MR. KNORPP: No objection.

MR. LARSON: Your Honor, this is a certified copy of an indictment out of the District Court of Amarillo, Texas, in Cause No. 15663-B, and it's styled the State of Texas Vs. Leonard McCollan, Jr. also known as Linnie McCollan. These are certified [116B] copies and at this time I would offer them into evidence.

THE COURT: What's the Exhibit number?

MR. LARSON: Ten, Your Honor.

THE COURT: It's admitted.

"Q All right, Sheriff, this warrant shows that it was executed on the 17th of January, 1973, at 2:55 o'clock p. m.?

"A Yes, sir.

"Q Pardon me, it came into the hand of the Sheriff on that date and it was executed on the twenty-first?

"A Right.

"Q Well, now, yesterday you testified that this warrant was also the one that you all served?

"A Yes, sir, this is the one that was in our files, this one here.

"Q Refer to that by exhibit number.

"A Number Seven, sir. This was the one that was in our file as the warrant for Leonard to be arrested on what we had.

"Q Okay. Well, you have another warrant there, was that executed on the same day or maybe the same days, explain to me why there is a difference.

"A Okay.

"Q I am referring now to the warrant in part of [117B] Plaintiff's Exhibit Ten.

"A This warrant in Plaintiff's Exhibit Ten is the original warrant for Leonard McCollan. This one is a bond forfeiture and bond withdrawal warrant in Plaintiff's Exhibit Number Seven. When he turned himself in, this came into the sheriff's office at that time, then this warrant was returned back to the Justice of the Peace where it was issued as him being arrested. This warrant was returned back to the district clerk to show that he was arrested.

"Q All right. Now this warrant that you said was the one that you all carried to Dallas marked Plaintiff's Exhibit Number Seven, it's been scratched out and they have '73 and '74 on there, and we don't know which is which, when it was filled out, but apparently somebody might have tried to fill it out in 1974, is that right?

"A This is the warrant, the one that we brought to Dallas to pick up Linnie. Okay, he was never taken before the Justice of the Peace. And what evidently the deputy does, I don't know to my knowledge, evidently he had filled it out partially but until he had taken him back before the magistrate where the warrant was issued he wouldn't have completed filing it and after Linnie was released, then it was put back into the file and not returned to that file until Leonard McCollan was arrested.

"Q Do you have any idea why he slipped and put 1974 [118B] on there?

"A Leonard was arrested in 1974 so he didn't —

"Q Well, wait a minute, this other warrant says he was arrested in 1973.

"A Okay, this warrant then is going to be the one that Leonard was arrested on the first time that he was brought into the office.

THE COURT: In other words, you say this warrant is the one —

THE WITNESS: This Exhibit Ten is going to be the one that was issued for him and he was brought into the office and released on bond.

"Q Sheriff, do you have any figures as to how many people were in your jail when Linnie McCollan, the Plaintiff in this case, was in your jail?

"A Approximately a hundred and fifty.

"Q And how much is your jail designed to hold?

"A Eighty-eight.

"Q You were pretty overcrowded, weren't you?

"A Yes, sir.

"Q Why is it that the bondsman — the bondsman is the one that paid Linnie's way back to Dallas, not you?

"A That's just an agreement with the bondsman. He said that he would pay it back to Dallas.

"Q What kind of an agreement?

[133] as Defendant's Exhibit Number Three, the third page and the fourth page are certified copies of Plaintiff's Exhibit Number Two, are they not?

"A Yes, sir.

"Q Can you tell me from the certified copy whether this bond was transferred on to a district court case from the numbers thereon?

"A Yes, sir. On top of the warrant here it shows 15663-B.

"Q Is that the number that you also found on the indictment that's contained in this exhibit?

"A Yes, sir.

"Q Is it fair to say in examining those documents, Sheriff, that the bond which was originally issued in the name of Linnie Carl McCollan and signed by Linnie Carl McCollan was used as the bond for the Justice of the Peace case, and then later it was transferred on to the indictment for Linnie Carl McCollan A/K/A Leonard McCollan?

"A Yes, sir.

"Q Sheriff, earlier, a question was put to you about no one checking the records in the I. D. Section until four days later. Why was there a delay in the checking of the I. D. files?

"A There was no one in I. D. during that time.

"Q Was it closed over the holiday period?

[136] Court or were they made up by your office?

"A They were made up by the J. P. Court.

MR. KNORPP: I will pass the witness.

#### RE-DIRECT EXAMINATION

BY MR. LARSON:

"Q Sheriff, when I took your deposition on January the twenty-fifth or twenty-fourth of this year, I believe, you had

all the same records that you will have here in Court today, is that right?

"A Yes, sir.

"Q And you had access to all of the same records back in January that you do now in November, is that right?

"A Restate it, you lost me.

"Q There is not any more records, you haven't discovered any more records between now, this date, and last January, have you?

"A Not after the deposition was taken.

"Q So at the deposition you had all of the same records that you have before you right here in Court, is that right?

"A Yes, sir, these records that I have here is what I had in my files.

"Q All right. So when you gave your deposition, you were talking about the same records that you're talking about here in Court today, is that right?

[137] "A Yes, sir.

"Q And you were referring to and had access to during your deposition all of these records that are out in front of you, isn't that true?

"A Yes, sir, I had these in front of me.

"Q Sheriff, will you agree with me that the name Joe Smith is a pretty common name?

"A Yes, sir.

"Q It's real common, isn't it?

"A Yes, sir.

"Q All right. Well, now, if a J. P. out in Potter County issued a warrant for a man named Joe Smith, that doesn't give you the right to arrest every Joe Smith in the United States, does it?

THE COURT: Counsel, don't argue the case. I am going to give you time to argue. This is arguing. There is no use to argue with the witness. I don't know whether you all are trying to get the last word with the witness or not, but let's get on with this case.

MR. LARSON: Well, I am just responding, Your Honor, to something that he said on Direct and I apologize.

THE COURT: That's what I am getting at. Both sides seem to want to get the last word. Now, we have [138] milked this subject dry as far as the Sheriff is concerned. I will let all of you argue the case to the jury.

"Q Does the Constitution of the United States take a vacation over the holidays in Potter County?

MR. KNORPP: Objection, Your Honor.

THE COURT: I sustain the objection. That's argumentative, Counsel. There is no use to ask the Sheriff that, it's a question of law, and I will instruct the jury as to the law.

MR. LARSON: All right. I will withdraw any further questions, Your Honor.

THE COURT: All right. Let's take a fifteen minute recess, ladies and gentlemen.

(Recess.)

MR. LARSON: Your Honor, I will call as my next witness, Mr. Tate.

GARY TATE,  
called as a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LARSON:

"Q Would you state your name for the jury, please, sir?

"A Gary R. Tate.

"Q And Mr. Tate, how are you presently employed?

[139] "A I'm a patrolman with the Dallas Police Department.

"Q How were you employed in December, 1972?

"A With the Dallas Police Department.

"Q So you have been a policeman for how long?

"A Five and a half years.

"Q What area or section of the City were you assigned to in December, December 26th, 1972?

"A The southeast district.

"Q All right, on that day did you have an occasion to come into contact with the Plaintiff in this lawsuit, Linnie McCollan?

"A Yes, sir.

"Q Would you tell us where and under what circumstances that occurred?

"A At the intersection of Scyene Road and Second Avenue. I pulled in behind Mr. McCollan who was parked at the red light facing north. The intersection light was red but

the lights for the southbound lane turned green for the drivers northbound and as traffic started moving south in the southbound lane, Mr. McCollan proceeded through the red light. And at that time I proceeded through behind him and stopped him.

"Q What kind of a vehicle was Mr. McCollan driving?

"A He was driving a station wagon, I can't tell you the make or model right now.

[140] "Q Was there anything particularly noticeable about the wagon? Did it have an insignia or anything on it?

"A It was a security service car.

"Q All right. I assume from what you have just testified to you were stopping Mr. McCollan because he ran a red light, is that right?

"A Yes, sir.

"Q How did you effectuate the stop?

"A I turned on my red lights on my marked vehicle, walked up to the car and told Mr. McCollan that I had stopped him for running a red light and asked him for his driver's license.

"Q Did he immediately stop or did he delay?

"A Yes, sir, he immediately stopped.

"Q Did he give you his driver's license?

"A Yes, sir, he did.

"Q That's where you learned his name? Is that right?

"A Yes, sir.

"Q What did you do then?

"A I went back to my vehicle and as a routine matter I ran a check on the license plates and on Mr. McCollan.

"Q All right. Now, the jury can't hear you and I can hardly hear you, would you please tell the jury what you heard over the radio or what did you learn as the result of the radio call?

[141] "A Sir?

"Q As the result of your radio call, what did you learn?

"A That there was a warrant in effect for Mr. McCollan at the time.

"Q All right. And what did you do in response to that?

"A I informed Mr. McCollan that they did have a warrant out for him that had been confirmed and that I would have to take him to jail.

"Q All right. Well, now, I assume you did that after you got off of your radio call, is that right?

"A Yes, sir.

"Q All right. When you confronted the Plaintiff with the information about the warrant, what, if anything, did he say?

"A He told me it wasn't him.

"Q Anything else?

"A Well, the information I received was that the warrant was out of Potter County, Amarillo, and I asked Mr. McCollan if he had been in Amarillo and he said that he had lived there at one time. I asked him again if he had been there in the last year and he said, yes, he had.

"Q All right. Then, you had him get out of your car or get out of his car?

[142] "A I had him get out of his car and had him seated in mine.

"Q Did you handcuff him?

"A I don't remember.

"Q Where did you take him then?

"A I took him to the southeast substation on Bexar Street.

"Q That has a lockup facility or jail, is that right?

"A Yes, sir.

"Q Did you place him in that facility?

"A Yes, sir, I did.

"Q All right. Now, did you do anything else to verify the fact of whether or not there was a warrant for this man?

"A Yes, sir. I had my supervisor, who is the desk sergeant at southeast, call Amarillo.

"Q You didn't make the call but were you present when it was done?

"A Yes, sir.

"Q All right. So as a result of that phone call you left him in jail, I take it, is that right?

"A Yes, sir.

MR. LARSON: Your witness.

#### CROSS-EXAMINATION

BY MR. KNORPP:

[143] "Q Mr. Tate, what information would you ordinarily put in to request a check on somebody to see whether they are wanted or not when you are out in the field?

"A It would be the last name, the first name, the race, the sex and the birth date.

"Q All right. In this particular case did you secure the Plaintiff's birth date from his driver's license?

"A Yes, sir.

"Q And did you have occasion to fill out a report by hand when you brought this subject in?

"A Yes, sir. You mean the arrest sheet?

"Q Yes, sir. Let me hand you Defendant's Exhibit Number Four which is a photocopy of the microfilm, can you recognize that?

"A Yes, sir.

"Q Does this appear to be in your own handwriting?

"A Yes, sir.

"Q That is the arrest sheet you filed in this particular case?

"A Yes, sir.

"Q Does it indicate anywhere on there the Texas Driver's License number, the number of the license that was displayed by the Plaintiff?

"A Yes, sir, it does.

"Q What is that driver's license number?

[144] "A Excuse me, I am sorry, sir. I was looking at the wrong blank. No, sir, it does not.

"Q Do you book any property under the Texas Driver's License number if they have one?

"A There's the number. I might have put it in the wrong blank. That looks like it. I have got it marked Texas.

"Q Would that be the driver's license number?

"A Yes, sir, it appears to be.

MR. KNORPP: I will tender Defendant's Exhibit Number Four.

MR. LARSON: No objection.

THE COURT: It's admitted.

"Q Do you ever use a driver's license number when you are checking or do you just generally use the name and date of birth and other characteristics that you described?

"A If we come back with a "hit" and the information on the computer has a license number then I will use it.

"Q I see. But on Mr. McCollan's case there was no license number listed?

MR. LARSON: Pass the witness, Your Honor.

MR. SoRELLE: I have no questions, Your Honor.

THE COURT: Is that all?

MR. LARSON: Just a few more questions.

#### RE-DIRECT EXAMINATION

[145] BY MR. LARSON:

"Q Did the Plaintiff tell you more than once that he wasn't the person that was wanted?

"A Yes, sir. Several times.

"Q All right. Is it ordinary procedure for you to make this phone call after someone is arrested on an out of county warrant?

"A Well, sir, yes. On all county warrants the normal procedure is to make the phone call to verify it with the county that has the warrant.

"Q All right. Now, this information you have here on your arrest sheet has been entered into evidence on warrant number 8762 from Judge Roberts, and I can't read your writing.

"A Court.

"Q Oh, Judge Roberts' court?

"A Yes, sir.

"Q Per Chief Deputy McCarty.

"A Yes.

"Q Was this information that you got from someone or how did you get that information?

"A That information on the warrant number and the court and the deputy chief came through my supervisor who made the phone call.

MR. LARSON: That's all. Thank you.

[146] MR. KNORPP: That's all.

MR. SoRELLE: I have no questions.

THE COURT: You're excused as a witness, Mr. Tate. Call your next witness.

MR. LARSON: I will call the Plaintiff, Your Honor, Linnie McCollan.

LINNIE CARL McCOLLAN,  
the Plaintiff, being duly sworn, testified as follows:

#### DIRECT EXAMINATION

BY MR. LARSON:

"Q State your name to the jury, please.

"A Linnie Carl McCollan.

"Q Mr. McCollan, you're going to have to speak up or put that microphone up so we can hear you.

"A Linnie Carl McCollan.

"Q When were you born?

"A December 8, 1949.

"Q Do you have any brothers and sisters?

"A Yes, sir.

"Q How many?

"A I have one brother and two more sisters.

"Q What's your brother's name?

"A Leonard McCollan.

"Q And is he older or younger than you?

"A He's the oldest.

[147] "Q All right. I'm going to show you what has been previously entered into evidence as Plaintiff's Exhibit Number Three and Plaintiff's Exhibit Number Two and I will ask you to tell us whether or not that's your brother?

"A Yes, sir.

"Q About how many years older is he than you?

"A Six.

"Q Do you know his birth date?

"A No, sir, I don't.

"Q Were you raised in Dallas or where?

"A I was raised in West Texas.

"Q Well, give us the towns, if you would, or cities.

"A I was born in Amarillo, Texas, and I was raised in Lubbock, Texas.

"Q Now, there has been entered into evidence previously here a driver's license that has been previously marked as Plaintiff's Exhibit Number Five, do you see what I am talking about?

"A Yes, sir.

"Q Now, that driver's license has your name on it, is that right?

"A Yes, sir.

"Q And whose picture is that?

"A That's my brother's picture.

"Q Did you in any way help him get that driver's [148] license?

"A No, no, I know nothing about it at all.

"Q You didn't give him that driver's license?

"A No.

"Q Did you help him get it?

"A No, sir.

"Q Do you have any idea how he got that?

"A No, I don't.

"Q All right. Now, do you remember December 26th, 1972?

"A Yes, sir.

"Q All right, who were you working for at that time?

"A Purolator Service as a mail messenger.

"Q What kind of work was that?

"A It's affiliated with Armored Motor Company where you pick up and deliver money and different important papers and stuff like that.

"Q You just heard the officer testify here, Officer Tate, is that right?

"A Yes, sir.

"Q About the traffic ticket?

"A Yes, sir.

"Q Do you remember that?

"A Yes, sir.

"Q And were you on duty at the time this traffic [149] ticket was given you?

"A Yes, sir. I was working.

"Q All right. What is your rate of pay and the hours that you were working?

"A I was making two fifty an hour and I was working straight time, ten hours a day, I believe, forty five hours a week, I believe.

"Q All right. Now, this was a Tuesday that you were arrested on, is that right?

"A Uh huh.

"Q Would you have worked, had this not happened the rest of that week?

"A Yes, sir.

"Q Do you work on Saturdays?

"A Yeah, uh huh.

"Q How many hours did you usually work on Saturdays?

"A Ten, I believe.

"Q And would you have worked the following week?

"A Yes, sir.

"Q What time — after you got out of jail in Potter County, when did you get to go back to work?

"A I don't — it was the next week, I believe.

"Q So, in other words, you missed almost two weeks of work?

"A Yes, sir.

[150] "Q As a result of the arrest and incarceration in Potter County, is that right?

"A Yes, sir.

"Q Now, did this officer give you a traffic citation?

"A Yeah, uh huh.

"Q All right. Then what did he do?

"A Well, he told me he was going to write me ticket for running a red light and I could appear in court on a certain date and I signed the traffic ticket. And then the call came back on his radio that I was wanted, you know, in Potter County, and so he told me he was going to have to take me to jail. I told him I hadn't been to Potter County for a year or two, so, you know, he said it was still his job to, you know, take me in. I kept telling him I wasn't the right person. I didn't know who they were looking for but I wasn't the right man. Finally, he told me to shut up about it and he was going to take me to jail and I shut up and so he just did that.

"Q Describe the facility you were put in at first.

"A It was a substation, it was one big — one big cell that I was placed in. This was just a big day room kind of cell with bars around it.

"Q How long did you stay there?

"A I stayed there until late that afternoon.

"Q Then where did you go?

[151] "A They transferred me to the downtown City Jail.

"Q All right. Describe the facility that you were in downtown in the City of Dallas.

"A I was in a small cell, smaller cell than the one that I was originally in and it had, I think, about three or four bunks in each one and I was in one of those.

"Q How long did you stay in the jail in the downtown part of Dallas?

"A Until approximately or until about December thirty I believe.

"Q What happened on December 30th?

"A Two men from Amarillo came down about five thirty that morning and woke me up. Well, the City woke me up and they called me down and out and then they came and said they came to get me to take me back to Amarillo. He had a talk with me first.

"Q What did he tell you?

"A He told me that he was with the sheriff's department and he came down to take me back to Amarillo and I was going to go peaceful or either he — if I tried to run or tried to escape or anything like this, he was going to definitely

shoot me and that was it, you know, he told me he was going to take me dead or alive back with him. I told him I wouldn't give him no trouble because I wasn't the man that he was looking for. I kept telling him that over and over [152] and over. By the time we got to Amarillo, he was convinced that I wasn't the one, he knew —

MR. KNORPP: Your Honor, I would have to object to this voluntary opinion, there is not any evidence on that, that's highly objectionable.

THE COURT: I sustain the objection and instruct the jury not to consider it.

"Q Mr. McCollan, it's the law that you are not allowed to give your opinion as to what you felt that someone else thought so I would appreciate it if you would refrain from doing that.

"A Yes, sir.

"Q Do you understand?

"A Yes, sir.

"Q All right. Now, you told the deputies from Potter County you weren't the one, is that right?

"A It was just one deputy.

"Q Just one?

"A Yes, sir.

"Q All right. Now, did one or two people take you in a vehicle up there?

"A Two.

"Q What kind of a vehicle was it?

"A It was a sheriff's department police car, it was a station wagon with a jail made inside of it.

[153] "Q What kind of jail? What did it look like?

"A Well, the front seat was divided off from me. I was sitting behind and it was a steel rack between us. There was no way you could get out, you know, from where I was at.

"Q All right. Now, did they have you restrained in any other way?

"A Yes, sir. They had handcuffs on my hands.

"Q Were your hands in front of you or in back?

"A No, they was in the back and they had a chain running down to my leg with cuffs on my legs, you know, a chain on my legs to my arms, to my wrist.

"Q All right. Now, from the time they left Dallas until they arrived in Amarillo did they ever stop the car?

"A Yes, sir, they stopped.

"Q Where?

"A They stopped to fill up. They stopped at a service station to fill up. Then they made another stop, I believe in Wichita Falls to eat.

"Q Did they give you anything to eat?

"A No, sir.

"Q Where did they leave you while they were eating?

"A They parked outside the building right in front of the window and left me in the car. They ate and they told me that I would eat when I got to Amarillo.

"Q All right. Now, about what time did you get to [154] Amarillo?

"A It was about two thirty, approximately three o'clock in the afternoon.

"Q How were you dressed at this time?

"A I just had my work clothes on and I had a little thin jacket, it wasn't that cold. It was kind of cold but it wasn't that cold, not here.

"Q Did the City of Dallas give you any clothes to wear while you were in the jail there?

"A No, sir.

"Q So you had the same clothes on you had on when you were arrested?

"A Yes, sir.

"Q On the 26th, is that right?

"A Yes, sir.

"Q All right. Now, what did they do to you when they got you to Amarillo? Did they put you in jail or what?

"A Yes, sir, they put me in jail.

"Q Did they take your fingerprints or a photograph of you?

"A Not then, no.

"Q Did they ever?

"A Just before I got ready to be released they took my thumb print, I believe.

"Q All right. And how long did you stay in the jail [155] up there before they let you loose?

"A It was after New Year's, it was the second, I think, the second of January.

"Q About what time on the second of January did they let you loose?

"A It was late in the afternoon, almost night, almost dark.

"Q Where did they take you when they let you loose?

"A They took me to the bondsman, the bondsman took me to the bus station and bought me a ticket. And then they took me back over to this cafe and gave me a drink and then they took me over to this friend girl's house and dropped me off.

"Q All right. When did you get on the bus?

"A The next day. The next morning she took me to the bus station.

"Q Did the Sheriff or of his deputies tell you what happened when they got you down out of the jail?

"A I told them what happened.

"Q What do you mean? Tell us what happened.

"A Well, I was telling everybody that was in the same tank with me that I wasn't the guy, you know, I hadn't been in Amarillo. So there was this special fellow there, he was from Mexico or he was over the cell, he was something like the cell boss and he said, "yeah, they —

[156] MR. KNORPP: I am going to object to what he said on the grounds of heresay.

THE COURT: I sustain the objection.

"Q Mr. McCollan, you can't testify as to what someone else said. Go on and tell your story.

THE COURT: Well, he can testify to any conversation he had with the deputy sheriff.

MR. LARSON: I understand, Your Honor, and I was about to explain that to him.

"Q You can tell what conversations you had with deputy sheriffs —

THE COURT: Suppose you just ask questions, Mr. Larson, and I will instruct the witness and I will sustain the objections and overrule them. You just ask questions.

MR. LARSON: All right, Sir.

"Q Go ahead, Mr. McCollan, answer.

"A Well —

THE COURT: What are you asking him?

MR. LARSON: I had asked him what conversations he had with the deputies and the sheriff just before he was released.

"A Well, this Johnny Carter came in and this friend girl came down and brought this man over to look at me. And after he found out I wasn't the one, he said, no, he definitely [157] is not the man. And he said, just hold on, you know, a couple of minutes and I will talk to the sheriff and we will have you out of here pretty soon. There was another sheriff with him, a black man. And they looked me over and went down. In about two hours — in about an hour or two hours later they came back up and called me down and out.

"Q Did you go down and visit the sheriff?

"A Yes, sir.

"Q Did you have any discussions with him?

"A Yes, sir.

"Q What did the sheriff tell you?

"A He told me he certainly didn't want to lock the wrong man up. I said I had been telling them all the time I wasn't the one. So he showed me this driver's license and said, that's the fellow we're looking for. Well, I said that's my brother, you know. He asked me where he was and I had

no idea, I hadn't saw him. So he told me or he asked me did I have any money and I told him no. He said well, don't worry about it, and if you need a reference or something back home on your job, just give me a call collect and I will tell them. Just give me a call collect and I will straighten this up.

"Q Was there any other conversation or discussion with the sheriff?

"A Well, they asked me to sign out a release or [158] something but I didn't do it.

"Q Did they explain to you what the release was?

"A No. One man told me it was for my property but I didn't have anything but this coat, but my jacket, I didn't know what it was.

"Q All right. Now you were present in Court, were you not, when the Sheriff drew the diagram of the jail?

"A Yes, sir.

"Q Would you step down beside the diagram, please?

"A Yes.

"Q Now, is this — do you remember what floor you were on to begin with?

"A No.

"Q Do you believe this to be an accurate representation of where you were?

"A Well, I know there was — I know across from me there was another cell, you know, I believe it was the Federal tank or something.

"Q Draw that on there if you would.

"A It was something like that.

"Q Put it in there.

"A Like so.

"Q Now, you have just marked a place on here where there is a door, is that right?

"A Yes, sir.

[180] "Q And I'm going to read what it says over your signature here, "This is to certify that I am the person named and described on the reverse side and that my license or driving privilege is not currently suspended, or revoked, cancelled or denied. I further certify that my license has not expired and that I am eligible for a duplicate." And you signed it "Linnie McCollan"?

"A Yes, sir.

"Q In fact, the front of that was not correct, was it?

"A Yes, sir, it was correct to my knowledge.

"Q The birth date is 12-8-48.

"A Well, like I said, that lady filled that out. I didn't know that was what was originally on my driver's license.

"Q I understand, Mr. McCollan, but you have a number of applications here and each time you signed the back certifying that the information was correct, did you not?

"A Well, yes, sir.

"Q And you always knew that your birth date wasn't 12-8-48?

"A It was 12-8-49.

"Q Right. And you also knew on at least two occasions that the address was not correct?

"A The address was correct on both.

(JURY OUT.)

[182] THE COURT: All right. Gentlemen, now that the jury has retired or taking a recess, go ahead.

"Q (By Mr. SoRelle) Mr. McCollan, you were charged, were you not, with violating the laws of the State of Texas in making false applications for duplicate driver's license relating to the obtaining of these duplicates, were you not?

"A I believe it was entering a false statement for having a Texas driver's license.

"Q Right, that you had made false statements when you signed those, and you stated that your license was not suspended or revoked.

"A Well, see, at the time when I got those, I didn't know anything about my driver's license had been suspended. They later sent me a letter at the same time they sent me a deal from down at the County showing that I owed a fine, I believe of fifty-eight dollars and something and I paid it. And then they sent me another fine and I paid that and later they sent me my money back. I got a check for some of it back.

"Q Mr. McCollan, didn't you in fact plead guilty to these charges of making false statements on your application for duplicate driver's licenses?

"A I didn't go to Court.

"Q Did you not go in and enter a guilty plea when you

[189] "Q What name does it have on it?

"A Linnie Carl McCollan.

"Q All right. And what is your date of birth shown as?

"A 12-8-48.

"Q Would you state or just read the Texas driver's license number that's on there?

"A It's 7842417.

"Q Was that the driver's license that you held in 1972?

"A No, sir.

"Q All right. Do you still have the driver's license you had at that time?

"A No, sir. Those are the ones that I lost.

"Q All right. You had previously, when I took your deposition, another driver's license that was in the possession of your Counsel?

"A That was the duplicate.

"Q That was a duplicate?

"A Yes, sir.

"Q Mr. McCollan, is this a driver's license that you have previously held?

"A Yes, sir.

"Q I will hand you what has been marked as Defendant's Exhibit Number Thirteen and I will ask you if this was your [190] driver's license with your picture on it?

"A Yes, sir.

"Q Is that your signature on that driver's license?

"A Yes, sir.

"Q And what period of time did that license cover? Do you know?

"A Until 1974.

"Q Do you know when you received it?

"A No, sir, I don't. This was when I got my commercial license.

"Q This is a commercial operator's license?

"A Yes, sir.

"Q And I believe your prior testimony, if I am not mistaken, was that you got that license some time in 1973, is that correct?

"A I think so.

"Q And was that when you were going to work for Gay's Delivery Service?

"A I believe so.

"Q Is that what you recall?

"A Yes, sir.

"Q You would have gotten that at that time and all of these other exhibits that I showed you previously you also identified as having your signature on them, is that correct?

"A Yes, sir.

[191] "Q Mr. McCollan, when you were arrested by the Dallas police in December of 1972 and placed in jail, was that your first experience in being in jail?

"A No, sir.

"Q How many times had you been in jail before?

"A I don't know the exact number.

"Q Had you ever been in the Dallas jail before?

"A Yes, sir.

"Q Had you ever spent any lengthy time in jail?

"A The Dallas City Jail?

"Q Yes.

"A No, sir.

"Q Had you ever spent any lengthy time in any other jail?

"A Yes, sir. In the County Jail.

"Q How long had you been there?

"A I think sixty days, I think, I stayed one time.

"Q And had you also been in jail in any other cities?

"A In my home town in Lubbock.

"Q I see. And had you spent any particular length of time in jail at that time?

"A No, sir.

"Q So you had been in jail in Lubbock and, I take it, the Dallas City Jail and the Dallas County Jail?

"A Yes, sir.

[192] "Q All right. And the length of time was, I am sorry, thirty days or sixty days, what did you say?

"A I believe about sixty days, I'm not sure.

"Q About sixty days?

"A Yes, sir.

"Q All right. Mr. McCollan, I hand you what has been marked as Defendant's Exhibit Number Fourteen, it appears

to be another duplicate license application. This one carries the date, I believe, of March 9th, 1972, and I will ask you if that is your signature on that exhibit?

"A No, sir.

"Q Is the other information on the exhibit consistent with your other applications for license, is it the same driver's license number and date of birth and name?

"A I believe so.

"Q Does that application or the signature on it appear to be the same as Defendant's Exhibit Number Five if you exclude the photograph?

"A Yes.

"Q And whose picture did you say was on Plaintiff's Exhibit Number Five?

"A My brother's, that's my brother's picture.

MR. LARSON: Excuse me, Your Honor, for the record he referred to that as Defendant's Exhibit Number Five and I want to be sure that the record is clear that [193] that's Plaintiff's Exhibit Number Five.

MR. SoRELLE: When I said Defendant's Exhibit Number Five, I was speaking of Plaintiff's Exhibit Number Five.

THE COURT: All right.

"Q Do you know if that is your brother's signature?

"A I think so, it looks like it, I'm not certain.

MR. SoRELLE: I would like to offer into evidence Defendant's Exhibit Number Fourteen.

MR. LARSON: No objection.

THE COURT: It's admitted.

"Q Mr. McCollan, your brother or there is evidence that your brother had that driver's license at one time, I believe you heard the evidence. Now, you also have stated that you may have been in Amarillo around March of 1972, is it possible that you gave your brother the information that is on your driver's license such as your date of birth?

"A No, sir, no way.

"Q Can you think of any way your brother got the information that you were listing your date of birth as December 8, 1948?

"A No, sir.

"Q Your brother wouldn't have any reason to pick that date unless he obtained it from you or from your driver's license, would he?

[194] "A I don't guess so.

"Q Because that's not your birth date, is it?

"A No, sir.

"Q Even though to this day your driver's license reflects that date?

"A. Yes, sir.

"Q You have never attempted to change that?

"A No.

"Q Mr. McCollan, have you ever been convicted of a crime for which you could receive punishment in excess of one year?

"A Yes, sir.

"Q What was the crime involved?

"A Marijuana.

"Q Was it for selling marijuana?

"A Yes, sir.

"Q And you were convicted in what court?

"A I don't remember the court.

"Q Where was it?

"A It's in Dallas.

"Q And did you receive a sentence for that?

"A Yes, sir. I received probation.

"Q How many years?

"A Seven.

"Q Have you been convicted of any crimes for which [195] you could be punished in excess of one year?

"A Not that I can think of. No, I haven't.

"Q Mr. McCollan, have you ever been fined or convicted of any type of an offense for giving a false statement?

"A Those licenses that you are talking about a while ago, I paid a fine of fifty-two fifty.

"Q And the fine that you paid on that was based on making a false statement, was it not?

"A Yes, sir.

"Q Mr. McCollan, I believe you stated or correct me if I am wrong, that the only time you ever saw Sheriff Baker was at the time he released you from jail, is that correct?

"A Yes, sir.

"Q And Sheriff Baker was the one that determined to release you, was he not?

"A I believe it was Johnny Carter, the bondsman, the bail bondsman.

"Q Well, Johnny Carter came in and got you, didn't he?

"A Yes, sir.

"Q And Sheriff Baker made the decision that you could go?

"A Yes, sir.

"Q And explained to you how it occurred and why there was a warrant for you, did he not?

[196] "A No, sir.

"Q Now, didn't he show you the driver's license?

"A Yes, sir.

"Q And say here's how we determined to issue a warrant for Linnie Carl McCollan?

"A He asked me who it was on that picture.

THE COURT: A little louder, please.

"A He told me who he was looking for, the guy on the picture, that he's the one responsible for me being arrested, you know.

"Q I see. And that it was your brother that had been using your name, your birth date, and displaying this to other people, is that correct?

"A Yes, sir.

"Q Do you recall if you were in Amarillo during August of 1972?

"A No, sir.

"Q You don't know whether you were or weren't, is that correct?

"A Right.

"Q Do you recall receiving a traffic ticket at that time?

"A No.

"Q All right. Mr. McCollan, you reviewed your income tax returns earlier. Now, is the income reflected on those





PLAINTIFF'S  
EXHIBIT  
3

117

054243  
051779

DPS 11101617 10-06-72  
FBI 640516G  
SOC 46561-1004  
346251602599

McGILLIAN, LONIARD S.  
R. # 100 07146  
911 180 5-0 118, DPA, TX

PLAINTIFF'S EXHIBIT  
4

54243-1177

54243-1177

LEONARD 054243

Name	Age	Sex	Color	Height	Weight
McGillian, L.	33	M	Color	5'7 1/2	165
Area	Color	Sex	Height	Weight	Age
6-11-73	N	M	5'7 1/2	165	33

EIGHT HAND				
1. Thumb	2. Index finger	3. Middle finger	4. Ring finger	5. Little finger
LEFT HAND				
6. Thumb	7. Index finger	8. Middle finger	9. Ring finger	10. Little finger

Impressions taken by: C. Culver  
Signature of official taking prints  
Date: 9-11-72

Note amputations:

Signature of person fingerprinted: L. McGillian

Four fingers taken simultaneously:

Four fingers taken simultaneously:

Left Hand	Left thumb	Right thumb	Right Hand

76-1268

## WARRANT OF ARREST OR CAPIAS

RECEIVED  
at 2:00 o'clock M

THE STATE OF TEXAS

NOV 3 1972

To the Sheriff or Any Constable of Potter County, Said State—GREETINGS:

You are Commanded to take the body of LINNIE CARL McCOLLAN AP DEPUTYPOTTER COUNTY, TEXAS  
SHERIFF'S OFFICEand bring him before me at my office in Amarillo, in said County, on the instant, then and there to answer the  
STATE OF TEXAS, for an offense against the laws of said state, to-wit: SALE OF NARCOTICS

AFFIDAVIT FILED BY JOHNNIE CARTER TO BE RELEASED AS SURETY ON BOND

of which offense he is accused by the written Complaint under oath of JOHNNIE CARTER  
filed before me.

HEREIN FAIL NOT but have you then and there, before me, this writ with your return endorsed thereon, showing how you have executed the same.

Witness my signature on this, the 3rd day of November 1972C. L. Roberts  
Justice of Peace, Precinct No. One, Potter County, Texas  
C. L. Roberts

119

OFFICER'S RETURN

Came to hand 31st day of December A. D. 1973 and executed  
 the 21st day of January A. D. 1974  
 by arresting the within named defendant and bringing him before the Courts as herein commanded.

Linnie Carl McCallum

SO Dec 22

T. L. Bales  
 Sheriff  
 Potter County  
 By Paul H. Bales Deputy

IN JUSTICE COURT  
 WARRANT OF ARREST

THE STATE OF TEXAS

vs. Linnie Carl McCallum  
 Issued the 3rd day of November A. D. 1972  
 Filed the 15th day of December A. D. 1972  
 Justice of the Peace  
C. R. Roberts  
 Justice of the Peace

Print Name \_\_\_\_\_  
 W. A. Bales, Sheriff  
 Sheriff's Office, Potter County, Texas  
 My \_\_\_\_\_

JAN 28 1974



54243 8762

MCCOLLUM Linnie C.		54243		8762	
516	W-2	411	AMA	TX	AMA TX
W	M	24	5-11 100	BLK	BRN DRK MED BONE
LABOR		POTTER		APD	
DATE AND TIME OF ARREST		4:30PM		SALE OF MARIJUANA	
10/6/72				DIRT	
FACTS OF ARREST (EXPLAIN IN DETAIL) SOC SEC # 465-61-1004 SELECTIVE SVC # ARMED SERVICE BRANCH AND SERIAL # OTHER IDENTIFIABLE # DRIVERS LICENSE # AND STATE ISSUED					
SUB TRANS THIS DATE ON W#8762 BOND 10,000 OR 1,000 CASH					

OTHER SHEET FOR FURTHER REMARKS

Oct. 10<sup>th</sup> 1972

COUNTY JAILER:  
 Kindly release from custody, so far as this office is concerned.  
Linnie McCallum

For reasons indicated below

Paid on Fine \_\_\_\_\_ And \_\_\_\_\_  
 Jail Credit \_\_\_\_\_ And \_\_\_\_\_  
 Number of days served \_\_\_\_\_  
 Case dismissed by \_\_\_\_\_  
 Grand Jury No Bill \_\_\_\_\_  
 Released to \_\_\_\_\_  
 By authority of \_\_\_\_\_  
 On 5,000 Bond  
James Clutter  
SOUL CITY BOND CO.  
JOE E. DAVIS  
By DERRICK CLUTTER

Paul Bales Sheriff  
Carry Bales

8762- Sale of Narcotic

PERMISSION TO CENSOR MAIL 54213

I \_\_\_\_\_ DO HEREBY GRANT  
 THE SHERIFF OF POTTER COUNTY PERMISSION TO OPEN AND  
 READ ALL INCOMING AND OUTGOING MAIL, EITHER WRITTEN  
 BY ME OR ADDRESSED TO ME. Linnie McCallum

Date \_\_\_\_\_

SIGNED Linnie McCallum

PLAINTIFF'S  
 EXHIBIT  
 9